

# AFRICA AMANI JOURNAL

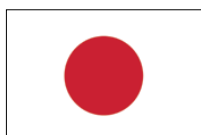
VOLUME 1, ISSUE 2



*A Journal of the International Peace Support Training Centre. Dedicated to Peace in Africa*

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# Africa AMANI Journal

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## Editorial

Rich documentary evidence exists to show the nature of violent transitions that many African countries went through following the epoch of independence. The period was characterised by natural calamities, non-inclusive political systems and blunt governance failures. Some countries went through some economic development successes and soon lapsed into decline. National GDPs of many states fell irredeemably. During the cold war, Africa underwent a violent period throughout the continent and experienced persistent armed conflicts and mass disruptions of civilians.



As the Cold War period ended and hope seemed to be returning to the world, conflicts in Africa re-ignited; Liberia, Sierra Leone, Rwanda and the DRC. At the same time, insurgencies such as the factions in DRC and Somalia powered by resources such as diamonds and charcoal resurfaced. This situation stagnated prospects for economic growth for Africa considerably. This stagnation however has been followed by the 21<sup>st</sup> century optimism for Africa and given hope for an end to inability and chronic poverty. There are signs for higher life expectancies on the continent, eradication of pandemics, better education and higher incomes. This promising scenario, should not however conceal the reality that instability and violence will persist and even increase in certain circumstances-reflecting the changing nature of conflict in Africa. There is every likelihood of increases of non-state combatants in conflicts as are the cases of Mali, Darfur and Eastern DRC. There is also the threatening tendency of the factions to be transnational and convergent thus posing danger to nations beyond their operational bases.

In this and the subsequent issues of the *Africa Amani Journal*, the editorial will pursue in detail trends of conflict in the region with particular attention to terrorism, sexual and gender based violence, electoral violence, resource centred conflicts, electoral violence, triggers of conflicts from climate change, human and arms trafficking, piracy and cyber crimes. In the current issues authors have gone into deeper analysis of issues related to *terrorism, protection of civilians in transitional circumstances, transitional justice in post-civil war peace building and perspective on conflict models*.

The editorial welcomes you to this second issue of the journal with encouragement to join in both readership and contribution of material for future editions.

**Prof. Timothy Gatara**

***Editor***

## **Trends and changing nature of conflicts in the region**

*Brigadier Patrick M. Nderitu, Director*

*International Peace Support Training Centre*



Challenges to peace and security in the region remain daunting. Electoral violence threatens peace in Burundi; sexual and gender based violence are as pervasive as ever, especially in the conflict zones of South Sudan and the Great Lakes Region; terrorism and its mutating nature accompanied by virulent radicalisation have reached alarming proportions; not least among these are the threats of piracy, human and weapons trafficking, cyber crimes and environmentally triggered conflicts rotating around access to vital life sustaining and development resources such as water, food and oil.

The International Peace Support Training Centre, (IPSTC) finds itself at the centre of these challenges. As one of its key responses, a new research agenda has been adopted to guide the work of the centre in 2015 as well as into the foreseeable future. This agenda recognises the trends and the changing nature of conflict in the region. This theme underlies the entire agenda. It encompasses subjects ranging from terrorism strategies in Eastern Africa to transnational insurgency in Africa with focus on the rise of the El Shabaab as an extremely prickly terror entity; the effects of the cross-border migrations on security; management of resource based conflicts, alternative models of peace support operations, de-radicalisation of youth and responses to sexual and gender based violence in the region.

As the centre delves into research and publication on the above challenges, I take the opportunity to welcome you to the second issue of the Centre's new journal, '*Africa Amani Journal*'. It is another milestone in advancing the sharing of knowledge in peace and security and in enhancement of deeper understanding of challenges to peace and security in modern times. More importantly, the application of knowledge gained to meet the challenges that face regional peace and security. In the current issue the journal presents work on the protection of civilians in disarmament initiatives within the context of the African Stand-by Force. The work examines the traditional disarmament and security threats to civilians and salience of '*practical disarmament*' in the protection of civilians. The journal also carries insights into '*transitional Justice and post-civil war peace building*' and attempts to address the question on how civil wars emerge after conflicts end. Among main works carried by the journal is also the application of the conflict theory to understanding conflict in Kenya and how it can be ameliorated or even averted.

In the days ahead and the coming issue of the Journal, I welcome all stakeholders in peace and security and those from related disciplines to not only the readership of the journal, but also to contributions from all. The Centre recognises with appreciation the continued support of the Government of Japan through UNDP and the partners of the Centre.

**Director,**  
**IPSTC.**



# Protection of civilians in disarmament initiative within the context of the African Standby force (ASF)

Kimani M. J. (Ph.D)

## Abstract

Disarmament, Demobilization and Reintegration (DDR), usually undertaken to immediately reduce violence and stabilize post-conflict situations, is among the first interventions in a larger assemblage of activities within a framework under which the concept of the Protection of Civilians (PoC) is realized. For various reasons, not least, diverse contexts, threats to civilian safety and security and differences among practitioners involved in post conflict situations, have rendered traditional approaches to DDR largely ineffective. Fortunately, different practitioners are increasingly embracing Practical Disarmament (PD). As opposed to traditional DDR, PD is a more comprehensive approach. This paper looks at various approaches used in PD and in what circumstances they are best applied to facilitate and enhance the PoC .

## Introduction and background

*'...between 20 and 30 November 2012. At least 97 women and 33 girls (aged between 6 and 17) were raped and a further five women were victims of attempted rape in and around Minova, Kalehe territory, South Kivu province... [perpetrators] entered houses, usually in groups of three to six, and, after threatening the inhabitants, looted whatever they could find... [they] would leave with the looted goods and at least one would stand guard as the remaining [perpetrators] raped women and girls in the house. Victims were threatened with death if they shouted; some were raped at gunpoint.*

The enormity of this incident, among others, is by any measure, profound. While the violent conflict in Eastern Democratic Republic of Congo can be categorized as one of the catastrophes of the present times, it is not lost that at the time these incidences took place, the international community, through the United Nations, had a large peacekeeping operation on the ground. The same scenario, albeit in different forms and intensity, is repeated in nearly all the on-going violent conflicts in the African continent, be it in

Mali, Central African Republic, Sudan and South Sudan or Somalia.

This phenomenon of conflict largely speaks to the question of safety and security of people caught in violent conflicts. Briefly, 'safety and security of communities means the protection and securing of residents and their property, and prevention of anything that may threaten them...' The threat to safety and security is prevalent in many post-conflict situations, where 'humanitarian problems, issues of DDR, small arms and light weapons collection and management, security sector reform/governance (SSR/G), the rule of law, transitional justice, reconstruction and socio-economic issues...' present critical challenges to stabilization efforts and the realization of sustainable peace.

To ensure and guarantee sustainable peace, in conflict and non-conflict situations, different approaches are adopted. These approaches entail a variety of activities with an aggregate and overarching goal to contribute and attain, what is popularly referred to as, human security. As a concept, the Commission for Human Security in 2003, postulated that "human

security means protecting vital freedoms... protecting people from critical and pervasive threats and situations, [and] building on their strengths and aspirations...human security connects different types of freedoms – freedom from want, freedom from fear and freedom to take action on one's own behalf”.

This definition of human security is different from the traditional definition of security that focused on the state, that is, securing sovereignty. The same concept of human security is owned by the African Union whose predecessor, the Organization of African unity (OAU) averred, in a 1991 document – Towards a Conference on Security, Stability Development and Cooperation in Africa that: “security embraces all aspects of the society including economic, political and social dimensions of individual, family, community, local and national life”.

The report went further to suggest that ‘the security of a nation must be constructed in terms of the security of the individual citizen to live in peace with access to basic necessities of life while fully participating in the affairs of his/her society in freedom and enjoying all fundamental human rights”.

The problem of the presence and proliferation of Small Arms and Light Weapons (SALW) is captured in details in the June 2013 AU draft Aide-Mémoire for the Consideration of Issues Pertaining to the Protection of Civilians in Africa. The Aide-Mémoire highlights the detrimental impact of Small Arms and Light Weapons, Mines and Explosive Remnants of War and more particularly small arms on the civilian population and their contribution in fuelling armed conflict. As a result, the Aide-Mémoire notes the importance of ensuring that Peace Support Operations (PSOs) have in their mandates practical measures aimed at monitoring and preventing the proliferation and secure collection and disposal of illicit SALW among other measures.

In all present day AU PSOs, the PoC is a core element of the mandates. Indeed, PoC is increasingly being perceived as the basic measure of the success of PSOs. The urgency and centrality of civilian protection especially at the end of armed conflict is a key determinant of the extent to which all the stakeholders see the PSO as a useful tool in post-conflict situations. In other words, the stakeholders, especially the local civilian population, apportion legitimacy and credibility of the PSOs on their ability to protect civilians.

This paper aims to explore how activities carried out under PSO mandates in African Peacekeeping missions can be enhanced to contribute better to the realization of the concept of Protection of Civilians (PoC). Specifically, the paper focuses on the role of Disarmament, Demobilization and Reintegration (DDR) as one of the long-term consolidation activities in post-conflict situations.

## **Statement of the problem**

One of the problems with the realization of PoC in PSOs is the fact that to date, there is no clear standard agreed definition of the concept of PoC. The lack of clarity effectively means that stakeholders working within peacekeeping missions, humanitarian and peacekeeping communities have their own interpretation of the civilian protection mandate.

This disparity cascades down to the specific activities implemented by the stakeholders. This gets complicated when the activities in question, for example, entails diverse components. The emphasis placed on the individual components, if not properly balanced, can result in disparities in the benefits accrued from the interventions. In the worst-case scenario these disparities can be a source of conflict that result in the outbreak or resurgence of violent confrontations and ultimately insecurity.

## Purpose and Objectives

The purpose of this study is to first understand the interface between PSOs and the concept of PoC especially in the Tier Frameworks of the UN and AU. Second, is to understand which activities are conceived under the different Tiers. Specifically, is to anchor disarmament to the concepts of PSO and PoC. Once anchored, the study explores the best approaches for realizing PoC in disarmament interventions.

In sum, the objectives of the study are:

1. To explore the aspect of PoC in Peace Support Operations
2. To establish the nexus between disarmament and PoC
3. To interrogate how PoC can be realized in disarmament interventions
4. To identify salient PoC elements and challenges in disarmament interventions

## Significance, Methodology, scope, delimitations and limitations

It is important to concretely understand how different elements in any given concepts reinforce and/or contradict each other. This is especially important where the different concepts aim to contribute to the same end goal, for example, PoC. Equally significant, is the need to identify the best approaches for realizing the successful implementation of specific interventions like DDR and, as well, understand how each approach affects the successful realization of other complementing activities.

The study adopts a purely desk study approach. The focus of the study is mainly African Union Peace Support Operations but will also draw from experiences of UN peacekeeping operations especially because that is where AU approaches are benchmarked. The study is purposely delimited to disarmament initiatives even though there exists critical complementary

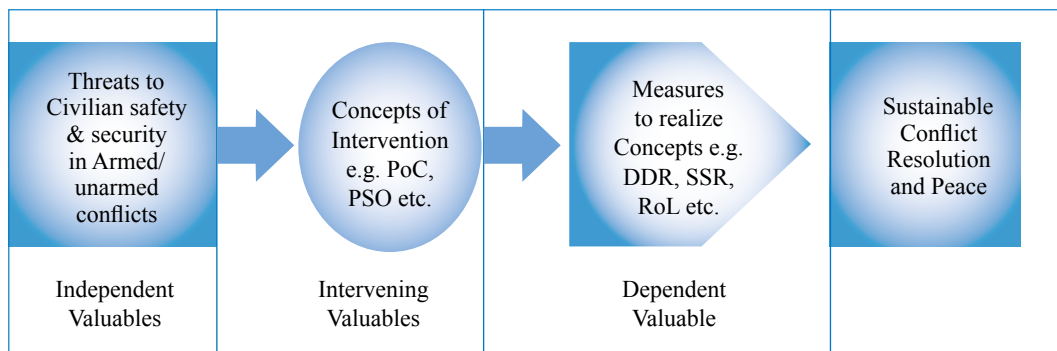
initiatives like Security Sector Reforms (SSR), Rule of Law (RoL) among others that, together, contribute towards the realization of sustainable conflict resolution and peace especially in post-conflict situations. The value of interactions with practitioners with first hand experience is immense; however, in this study there were no opportunities to undertake any field study.

## Theoretical Framework/ Conceptual Framework

In both armed, and unarmed conflicts, civilians face a diverse array of threats including violence (killings, torture, sexual violence), coercion (arbitrary displacement, forced recruitment, abduction), deprivation (denial of access to humanitarian assistance, discrimination in the provision of basic services) and, as has been witnessed in the DRC, the peacekeepers can also be a threat. The civilian population experiences these varied threats in different contexts and intensities. The more divergent the threats, different context and intensities, the more varied are the interventions and stakeholders. The succeeding sections one and two of this report endeavor to interrogate the intricacies intertwining the concepts of PSOs, PoC and their nexus with disarmament.

The conceptual framework is based on the contention that it is important within a given conflict or post-conflict context to follow a logical process that starts with (i) exploring and understanding all the factors that threaten the safety and security of the civilian populations, (ii) framing these in any of the given operational concepts (PSO or PoC), (iii) identifying the various measures necessary to operationalize the concepts (DDR, RoL, SSR) and exploring the best strategies to implement them for purposes of (iv) realizing the desired sustainable conflict resolution and peace. In this logical diagram, items (i) constitute the independent variable; item (iii) the intervening variable; and, (iv) the dependent variable. This paper focuses on the intervening variables (item (iii)) alone.

## Conceptual Framework of the Study



### *Context of the Conflict/Post-conflict situation*

## Definition of Concepts

The detailed description of the key concepts and terminologies used in the paper is given in the endnotes but briefly include:

The AU Draft Guidelines on the Protection of Civilians in African Union Peace Support Operations defines the Protection of Civilians as activities undertaken to improve the security of the population and people at risk, and to ensure the full respect for the rights of groups and the individual recognised under various regional instruments.

The Concept of R2P emerged in 2005 from recommendations by the UN International Commission on Intervention and State Sovereignty (ICISS) in view of the setbacks with the full realization of the PoC concept in violent conflicts experienced in the 1990s e.g. in Liberia, Somalia, Rwanda, Sierra Leone, Burundi, the DRC, Sudan among others. The R2P Concept applies in situations where atrocious crimes e.g. genocide, crimes against humanity, war crimes, ethnic cleansing are systematic and planned as part of the war strategy.

Traditional peacekeeping operations involved authorized military operations undertaken with the consent of the major parties to a dispute that were designed to monitor and facilitate implementation of peace agreements e.g. a ceasefire, truce etc. Peacekeeping was

also aimed at supporting diplomatic efforts to reach long-term political settlements. Second generation peacekeeping operations (often referred to as Peace Support Operations (PSOs)) are more complex and multidimensional where in addition to traditional military functions, police and civilian components are an integral part of the operation.

Broadly defined, Small Arms are those weapons designed for personal use while light weapons are those designed for use by several persons serving as a crew.

The concept of Practical Disarmament can be traced to as far back as 1995, through the UN's "Supplement to an Agenda for Peace" that, for the first time, recognized and acknowledged the phenomenon of armed non-state actors; and, called for practical disarmament measures, different from the regulations and sanctions applicable to nation-states.

Broadly, combatants are persons who are members of a national army or an irregular military organization/structure and who are actively participating in military activities and hostilities. Ex-combatants are defined as persons who have laid down or surrendered their arms with a view to entering a DDR process.

Rule of Law (RoL) refer to a principle of governance in which all persons, institutions and entities, public and private, including the

State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

Security Sector Reform (SSR) refers to a dynamic concept involving the design and implementation of a strategy for the management of security functions in a democratically accountable, efficient and effective manner to initiate and support reform of the national security infra-structure.

Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development.

## **Theoretical Frameworks: Situating PoC**

### **Protection of civilians in Conflict Situations**

Parts of the African continent continue to experience and grapple with situations of violent conflicts. These conflicts arise out of a range of factors including skewed governance; rampant quest for political power; inequitable distribution, use and ownership of national resources; negative ethnicity; and religious clefs among others. The conflicts are largely intra-state in nature and increasingly involve non-state actors that employ asymmetric tactics of execution including use of improvised explosive devices, grenades and other explosive ordinances. In these types of violent conflicts, it is increasingly difficult to distinguish the real combatants or what exactly is the root causes of the violence.

In any violent conflict situation, some sections of the civilian population might also be combatants but what is clear is that the majority of the victims are civilians who include vulnerable sections of the community including the elderly, women and children. Depending

on the conflict and if not accidentally caught between fighters, the combatants can directly target these vulnerable groups, use them as shields, recruit them into fighting and subject them to other forms of violence not least, sexual violence and general human rights abuse. Indeed, in protracted violent conflicts, the civilian population experience serious threats such as genocide, war crimes, crimes against humanity and ethnic cleansing.

Peace Support Operations (PSO) are a tool used by the UN and the AU to assist countries in or emerging from violent conflict to end the conflict, restore peace and facilitate peacebuilding interventions that ensure that the affected countries do not relapse into conflict. As a result of the hostilities and the diverse number and interests of parties involved in conflict, PSOs are considered to be an important intervention in ending conflict and restoring peace as it is considered or expected to be an impartial tool. The civilians who are usually most affected by the conflict place high hopes on the PSOs to not only protect them but also to help them get justice and facilitate a return to normalcy.

Protection of civilian mandates are anchored on the principles of peacekeeping<sup>12</sup> – consent of the host government and main parties to the conflict, impartiality, non-use of force except in self defense or defense of the mandate, legitimacy and credibility among the relevant stakeholders. Equally important is the recognition that even though the primary responsibility for PoC lies with the host governments there are also many other different actors with distinct roles and responsibilities.

The extent to which the PSOs are able to protect and assist the civilian population return to normal life determines the perception and acceptance of the intervention; that is, the legitimacy and credibility of the PSO. If the civilian population does not experience any levels of security or have their rights protected, they will withdraw their support to the PSO.



The PSOs can then not be effective in building and sustaining the necessary political goodwill towards the peace process. Thus, a key primary responsibility of any PSO is to protect the civilian population.

### The UN and AU engagement in PoC

Consideration of aspects of PoC in UN peacekeeping activities can be traced as far back as the Operational Directive No. 8 of the 1960 UN Operation in the Congo (ONUC). In 1992 the UN Protection Force deployed to the former Yugoslavia (UNPROFOR) was the next attempt by the UN to embrace elements of PoC but the mission was neither mandated nor resourced to provide direct physical protection to civilians.<sup>13</sup> Drawing from lessons learned, the UN in 1999 took the first bold step to specifically incorporate aspects of PoC in a peacekeeping mission by mandating the UN Mission in Sierra Leone (UNAMSIL) to ‘take the necessary action... within its capabilities and areas of deployment, to accord protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone and the ECOMOG’.<sup>14</sup> Since then, and given the many conflicts on the continent, especially intra-state ones, that are exceedingly violent and have devastating negative impacts on civilian populations, the UN has endeavoured to mainstream PoC in its peacekeeping missions’ mandates as reflected in different Security Council Resolutions (SCR) including SCR 1265 (1999), 1674 (2006), 1894 (2009) among others.<sup>15</sup> The UN has further considered protection against specific threats in particular sexual and gender-based violence that usually targets women and children.<sup>16</sup> Indeed, the present-day UN peacekeeping mandates have explicit authority ‘to use all necessary means to protect civilians under imminent threat of physical violence, without prejudice to the responsibility of the host Government, within the limits of its capacity and areas of deployment’.<sup>17</sup>

Pursuant to its mandate, the African Union Peace and Security Council (AUPSC) respond to conflicts on the continent through various

mechanisms delineated within the African Peace and Security Architecture (APSA). The mandate of the AU to intervene in conflict situations is legally founded in its Constitutive Act where, Article 4(h) legitimizes ‘the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity’.<sup>18</sup> In addition, the AU embraces the principle of non-indifference and endeavors to offer ‘African solutions to African problems’.<sup>19</sup> Indeed, its harmonized doctrine for PSOs clearly states that ‘the protection of a non-combatant’s basic right to life and dignity is a fundamental element of all peace support operations’.<sup>20</sup> The AU further embraces the doctrine of Responsibility-to-Protect (R2P)<sup>21</sup> and will intervene in conflict situations where the host government is unable or unwilling to protect its citizens in times of violent conflict. Thus, working with the national government and other relevant stakeholders, a key intervention by the AU ensures that the civilian populations are adequately protected in situations of violent conflicts.

The continental engagement in PoC is informed by the changes in operational environment of PSOs especially after the setbacks experienced with the protection of civilians e.g. in Rwanda in the 1990s.<sup>22</sup> Present-day PSOs are increasingly integrated, multidisciplinary and multidimensional<sup>23</sup> as noted by the AU 2010 *Draft Guidelines on the Protection of Civilians in African Union Peace Support Operations*’ that states: ‘protection of civilians in a peace support mission requires a multidimensional and coordinated approach with clear and differentiated responsibilities for military, police and civilian components [...]’<sup>24</sup> The AU defines the Protection of Civilians as:

*‘Activities undertaken to improve the security of the population and people at risk, and to ensure the full respect for the rights of groups and the individual recognised under regional instruments, including the African Charter of Human and Peoples’ Rights, the African*

*Union Convention for the Protection and Assistance of Internally Displaced Persons, and the Convention Governing the Specific Aspects of Refugee Problems in Africa, and international law, including humanitarian, human rights and refugee law'.<sup>25</sup>*

The AU has over time developed several instruments that address the protection of civilians. These include, among others, the AU Constitutive Act (2000), the African Charter on Human and People's Rights (1986), the African Charter on the Rights and Welfare of the Child (1999), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002) and the AU Convention for the Protection and Assistance to Internally Displaced Persons (2009).<sup>26</sup>

### Realizing PoC in PSOs

The UN and the AU have adopted a basic three (UN) and four-tiered (AU) framework used in its PSOs to realize the concept of PoC:<sup>27</sup>

1. Protection as part of the political process: that aims to ensure that a State emerging from conflict establishes sustainable peace by making sure that situations that give rise to armed violence are eliminated and that issues of justice and accountability are adequately addressed;
2. Protection from physical violence: through the undertaking of activities that minimize the risk of escalation of conflict (prevention); mitigate the imminent threat by combatants (pre-emption); effectively neutralize combatants after an outbreak of violence (response); and, managing post-conflict situations e.g. DDR activities (consolidation);
3. Establishment of a protective environment: that includes the peace building initiatives to mitigate against potential relapse into violent conflicts; and,

4. Rights-based protection: applicable to both individuals and groups and that may include, for example, the monitoring and reporting of human rights violations and the promotion and protection of human rights.

The mutually reinforcing tiered approach and the diverse activities it encompasses stems from the acknowledgement that protection should be a far more reaching intervention that goes beyond the immediate protection from imminent physical threat. Rather, protection is a shared responsibility between host governments, local and external stakeholders and the communities involved.

Full realization of the concept of PoC is closely tied to the successful implementation of the many different tasks undertaken under PSOs.<sup>28</sup> These include:

- Support to the political processes: lasting peace requires a sound political foundation that ensures that post-conflict countries do not relapse into violent conflict and that there is justice and accountability which are key factors of protection.
- Conflict management and support to reconciliation: capacity building of local conflict resolution and reconciliation processes is a critical element that contributes towards stability and lasting peace.
- Protection from physical violence: civilians must be protected from the effects of physical violence or the imminent threat to violence.
- Creating conditions conducive to the delivery of humanitarian assistance: humanitarian assistance to civilians must be guaranteed and necessary actions must be taken to ensure that such provision is not threatened.
- Promotion of the Protection of Human Rights: it is important to facilitate the

necessary infrastructures and capacities that ensure that human rights violations are investigated, monitored and reported in order to assist in ending the culture of impunity.

- Mitigating involuntary displacements: forceful displacement of populations is a violation of human rights and where it has occurred, the refugees and the Internally Displaced Persons (IDPs) require to be facilitated to voluntarily return home and live in dignity.
- Rule of Law, Security Sector Reform and DDR: to ensure lasting peace, illicit armaments should be removed from unauthorised hands. The capacities of the military and police institutions require support and re-orientation if the rule of law is to be observed and that all are accountable to laws that are publicly promulgated, equally enforced, independently enforced and that are consistent with international norms and standards.

## **Theoretical Framework: Nexus between Disarmament and PoC**

### **SALW in Conflict Situations**

A key aspect of the many of the protracted intra-state conflicts witnessed since the early 1990s, is the diversity of the perpetrators especially non-state actors that include warlords, private militias, armed civilians and other criminal elements. Another phenomenon is the increased level of indiscriminate violence in the conflicts and their ability to spill over across national and international borders. It has been suggested that the growing use of information communication technologies and the ease in national and international travel are some of the factors contributing to the fluid transformation of conflict. However, it is the availability and (mis-)use of sophisticated Small Arms and Light Weapons (SALW)<sup>29</sup> that is attributed with the exacerbation of violence in the conflicts.

The proliferation and application of illicit SALW is prevalent in both non-violent and violent conflict situations. In both situations, there are diverse socio-political, economic and cultural factors that drive the proliferation of SALW not least including: absent/inept/discriminatory governance structures and political authority; porous international borders; in-equitable distribution of natural resources and government services; and, retrogressive cultural practices e.g. cattle rustling among pastoralist communities; among others.<sup>30</sup> In post conflict situations, proliferation can be fuelled by such factors as: the breakdown of the rule of law, collapsed administrative and physical infrastructure, lack of productive economic opportunities especially for the youth, presence of remnant SALWs, threat from internal and external insurgency groups; among others.

SALW sustains and exacerbates violent conflicts, threatens the functions of legitimate governments, threatens the application and observance of international human rights and humanitarian laws, endangers humanitarian relief and general development and can entrench a culture of violence and impunity.<sup>31</sup> In sum, illicit SALWs are a threat to peace, security and economic development to any country but are especially worse for countries emerging from conflict.<sup>32</sup> The AU has posited that the availability and use of illicit SALW give rise to social violence, corruption and other criminal enterprises that can also be attributed to terrorism, mercenary activities and trans-national organized crime like drug and human trafficking. In addition, in post-conflict situations, the use of illicit SALW complicates reconstruction and peacebuilding initiatives; indeed, illicit SALW constitute part of the factors that threaten continental peace, development and stability.<sup>33</sup> For this reason, the Constitutive Act of the AU and the Protocol establishing the Peace and Security Council, that have very clear principles regarding peace and security on the continent, have detailed principles on the management of the challenge of SALW in the continent.<sup>34</sup>



## Disarmament and PoC

Countries emerging from violent conflicts are characterised by instability and a general threat to security. In these countries, it is imperative that immediate interventions to stabilize and mitigate against insecurity are undertaken. This is critical in order to facilitate the implementation of needed activities such as relief and humanitarian activities, reconciliation, peacebuilding and the start of general reconstruction. At the end of hostilities the first-line of intervention is usually the Disarmament, Demobilization and Reintegration (DDR) of former combatants. However, as a result of the urgency to end insecurity, the initial DDR initiatives focused on the immediate need to stabilize the situations as opposed to comprehensively addressing the pertinent underlying issues contributing to insecurity and instability.<sup>35</sup> Fortunately, this has changed and the present-day DDR initiatives are more comprehensive.

DDR initiatives are undertaken within the larger context of wide-ranging activities outlined in AUPSO mandates. The aggregate outcome of the successful implementation of these activities ensures that communities affected by violent conflicts can revert to situations of normalcy where their human security is facilitated and guaranteed. It has been pointed out that in an effort to realize PoC objectives, the AU adopts a Four-Tier approach in its PSO missions. Briefly these include: Protection as part of the political process; Protection from physical violence; Establishment of a protective environment; and, Rights-based protection. While the successful implementation of a comprehensive DDR initiative contributes to the overall realization of PoC, it is the activities under Tier Two that benefit most.

The removal of illicit SALW can minimize the risk of a potential escalation of violence (prevention) especially given the fact that combatants no longer have weapons in their possession (pre-emption). However, should violence break out, it is easier to contain it

(response) and to continue implementing reconstruction and peace-building activities (consolidation). The DDR initiatives are complemented by other closely related activities including Rule of Law and Security Sector Reforms that aim to capacitate law enforcement institutions to adopt and embrace approaches, that are accountable and consistent with acceptable international norms and standards, in their work. These initiatives, proposed under Tier Two, demonstrate the clear link between disarmament and PoC.

## Anchoring Disarmament in PSO mandates and PoC concept

To address the illicit proliferation and application of SALW, the AU approaches are founded on two principal documents. The first document is the African Common Position on the Illicit Proliferation, Circulation and Trafficking of SALW (Bamako Declaration) that was adopted by the Council of Ministers of the OAU in December 2000.<sup>36</sup> The Declaration provides for the identification, seizure and destruction of illicit arms and the establishment of measures to control the circulation, transfer and use of SALW. The second document is the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, adopted in New York in July 2001.<sup>37</sup> In addition to these two documents, the AU subscribes to other protocols and conventions.<sup>38</sup>

Substantively, DDR activities within the AU can be traced to the Solemn Declaration on a Common African Defence and Security Policy (CADSP) that was adopted in February 2004.<sup>39</sup> The AU Peace and Security Council (PSC) is charged with the responsibility of realizing the objectives of the Declaration and has since, 2006, under the Policy Framework on Post Conflict Reconstruction and Development Policy (PCRD)<sup>40</sup> engaged in strengthening its own capacity and that of the member states on DDR. The AU advocates for the integration of and engagement in DDR throughout the

entire spectrum of peace processes - peace negotiations, peacekeeping and peace building initiatives. This is reflected in various AU African Peace and Security Architecture (AU APSA) Roadmaps; for example, APSA Road Map (2011-2013) states that DDR must *'be integrated into the entire peace processes, from the initial peace negotiations through peacekeeping and follow-on peace building activities [and]... calls for collaboration with relevant Units within the Peace and Security Department, and also with other relevant Departments'*.<sup>41</sup>

A key activity by the AU towards the unpacking of the APSA Roadmaps, is a response to a decision by the Assembly (Decision of the Assembly/AU/Dec.369(XVII). In its response, the AU developed a draft 'AU Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of SALW'. This draft, considered and adopted at a meeting from 26-29 September 2011 in Lome, Togo<sup>42</sup>, has the overall objective of preventing, combating and eradicating the illicit proliferation, circulation and trafficking of SALW in an integrated and holistic manner. The AU further elaborated a comprehensive Action Plan to facilitate the implementation and realization of the strategy.<sup>43</sup>

The availability and application of illicit SALW are a threat to general peace and security because, besides exacerbating conflict, threatening peaceful reconciliation and long-term peacebuilding, they also cement cultures of violence and impunity. In such circumstances, human security cannot be realized or guaranteed whether in peace, conflict or post-conflict situations.

In post conflict-situations in particular, the primary mandate of POC initiatives is to safeguard and mitigate against threats to human security through the implementation of *'...activities aimed at obtaining full respect for the rights of the individual in accordance with international humanitarian, human rights and refugee law'*.<sup>44</sup> The removal of SALW from unauthorized hands, mitigates fear and

insecurity of armed violence in a society and is thus one of the activities that contributes towards the realization of the rights of individuals.

Tier two, Protection from Physical Violence, of the UN and AU Framework for operationalizing the concept of PoC, points out that DDR is one of the key activities that contribute significantly to the realization of peace in post-conflict situations (consolidation).

Several UN resolutions are explicit on the need to address the question of SALW in integrated approaches aimed at the realization of sustainable peace. For example, in its focus on the *'root causes of armed conflict and threats to the security of women and girls'*, the UNSCR 2122 (2013), *'...links disarmament and gender equality and addresses the Arms Trade Treaty (ATT); acknowledging its adoption and looking forward to its contribution to reducing violence... builds on ...UNSCR 2117 in urging member states to ensure women's full and meaningful participation in combating illicit Small Arms and Light Weapons transfer and misuse'*.

Important UN and AU documents on conflict resolution and peacebuilding have underscored the primacy of removing SALW from (Ex-)combatants and have ensured that the necessary activities are an integral part of their PSO mandates. One of these is the African Union/UN hybrid operation/mission in Darfur (UNAMID) whose mandate, among others include: *'Protection of civilians'* and *'Contributing to the promotion of human rights and the rule of law'*. Towards this, UNAMID undertakes a comprehensive DDR programme within the provisions of Article 29 of the May 2006 Darfur Peace Agreement – Final Security Arrangements that *'...provides for integration, disarmament, demobilization and social and economic reintegration and the reform of selected national security institutions'*<sup>45</sup>; and the July 2011 Doha Document for Peace in Darfur peace Agreement (DDPD) that extensively outlines the necessary activities to be considered in DDR.<sup>46</sup>

From the foregoing, it is clear that DDR activities are firmly anchored in PSO mandates and PoC concepts.

### Realizing PoC in Disarmament Operations

In many conflict situations, there are different actors (aggrieved and spoilers) behind each of the factors that drive the proliferation and use of illicit SALW. These actors may include: ordinary civilians who feel insecure/threatened (politically, economically or culturally), armed ex-combatants (state and non-state), war lords, individual criminals (singularly or as an organized group), terrorists, gun merchants/profiteers and criminal cartels (smugglers, human/drug traffickers), amongst others. Undoubtedly, the motives, organization and resources of these groups are different.

The nature of many post-conflict situations is such that many of these armed/profit-seeking groups are present and all have significant contributions to the general instability and insecurity. This is the scenario that faces PSO missions with mandates for DDR. Indeed, PSO DDR initiatives can be complicated given the need to develop specific and targeted approaches for each different armed group.

It has been pointed out that traditional DDR activities were more concerned with the immediate reduction of violence and the need to stabilize the conflict situations. Increasingly, DDR activities have embraced additional elements aimed at enhancing their contribution towards reconstruction and peacebuilding initiatives. The more comprehensive DDR approach is usually referred to as Practical Disarmament (PD).<sup>47</sup> In brief, PD is an approach that goes beyond the hitherto technical interventions of arms collection. PD is more comprehensive and endeavors to take into consideration demand factors (why people are armed), accountability (of processes and end results) and the reform of state security frameworks/institutions (rule of law, human rights etc.).<sup>48</sup>

## Identifying PoC elements and challenges in Practical Disarmament

### Approaches to Practical disarmament

In practical disarmament, the approaches employed are largely dependent on the specific group that is targeted by the process. In any of the PD approaches used, there are different PoC concerns that require to be taken into account.

#### Voluntary Surrender

In Voluntary surrender, individuals or groups holding unauthorised SALW return them to a legally mandated body. The return of the arms is purely on the individuals' own accord and there are no sanctions imposed for having held the arms. This is usually guaranteed in specified provisions of the law. The government will usually specify where the arms should be taken, the time frame for surrender or any other modalities deemed necessary.

In many instances, this being a voluntary process, there are no major protection concerns. However, it is often that not all the armed persons are willing to surrender their arms. Such people can be hostile against those that voluntarily wish to surrender their weapons. This is especially out of the fear that they may be reported as having arms in their possession. In such circumstances, it is incumbent on the mandated authorities to accord those volunteering to return firearms security from intimidation and threats to their safety. In addition, the government should ensure that the collection centres are safe and secure to avoid potential theft of the returned weapons or accidents arising from poor handling.

#### Amnesty

There are circumstances where individuals self-arm for what they consider as 'genuine' reasons; e.g. where the government is not able to provide security. However, the presence of arms in unauthorized hands constitutes a general security threat both to those holding the arms and the

country in general. Under such circumstances governments often extend amnesties to those holding arms to return them to a designated authority. In many post conflict situations governments set up Amnesty Commissions to oversee this process.<sup>49</sup> The responsible authority sets the time frame, location where the arms are to be returned and provides the necessary security. The protection concerns in this approach are similar to those under the ‘Voluntary Surrender’.

### **Forceful Disarmament**

In many instances, voluntary surrender or the offer of amnesty to those returning arms might not result in the return of all the illegally held arms. An escalation of armed violence might still prevail and/or the government might be of the opinion that the number of arms in illegal hands is far greater than what was returned. In such circumstances, the government uses its legitimate authority to forcefully look for and collect the firearms either from armed individuals or groups.

In nearly all the cases of forceful disarmament, there are reported cases of violence and general abuse of human rights by those carrying out the disarmament. It is important to pay attention to PoC concerns during forceful disarmament. This usually starts with carrying out a careful determination of the number of illegal arms in unauthorized hands. This is important in order to avoid situations where people are harassed to return or surrender weapons that they actually do not have. As a result of the many shortfalls with forceful disarmament, practical disarmament discourages this approach. However, where it must be carried out, it is important that the entire exercise is carefully planned and coordinated and that the appropriate policy and legal provisions are put in place and adhered to.

### **Weapons in Exchange for Development (WfD)**

As a way of encouraging the voluntary return of illegally held arms, governments and its’ partners link the surrender of arms and the development opportunities extended to the community. This

is a complicated approach especially given the fact that it is the right of every citizen to enjoy or benefit from social amenities that the government is obligated to provide. In the same vein, the approach can be misconstrued as tantamount to blackmail of the community by a weak government that has been unable to undertake its obligations in disarmament. In addition, the measure and determination of the level of development and the number or types of arms returned can be contended. Finally, not everybody in a community holds an illegal weapon and thus, the collective punishment or denial of development when it is linked to the number of arms surrendered is discriminatory. This disarmament approach is not recommended in practical disarmament but where it is employed, PoC concerns must be taken into account. In particular, it is important that the community is involved in all the steps of the process and that general security is guaranteed.

### **Weapons Linked to Development (WLD)**

As opposed to the weapons in exchange of development approach, the government can directly link the voluntary community surrender of arms to an increase of inputs into already ongoing development initiatives. Additional or complementary development initiatives are undertaken without any pre-conditions but the level of engagement by government corresponds to an agreed number of surrendered weapons – the more weapons returned the higher the engagement. This approach can encourage community participation in development and security as they see the benefits of voluntary surrender of illegally held arms. The cooperation by the community ensures that protection concerns are integral to the disarmament process.

### **Weapons in Exchange for Incentives (WEI)**

The ‘Weapons in exchange of development (WfD)’ and ‘Weapons Linked to Development (WLD)’ approaches are community based. There might be circumstances where the mandated authority might wish to focus on individuals holding illegal arms. The ‘Weapons in Exchange

for Incentives (WEI) initiative directly link voluntary surrender of weapons to the provision of pre-determined benefits or material goods to individuals. Determining the value of the incentive against the number or type of weapon returned is not easy and, in many instances, people return the unserviceable weapons in their possession and retain the functional ones. In addition, the offer of incentives might lead unscrupulous individuals using unorthodox means to acquire weapons to exchange for incentives. Such people would be committing a criminal offense and the award of the incentive can be construed as rewarding their criminality. There are grave protection concerns tied to this approach not least being the risk of insecurity arising from a renewed proliferation of arms in anticipation of incentives. This is especially critical if the government is unable to match the incentive programme with equivalent strict enforcement of legislation on possession and use of arms.<sup>50</sup>

### Buy-Back

Another approach that targets individuals as opposed to the community is that of buying arms held in unauthorized hands. It is usually recommended as a short-term intervention as it is open to serious abuse. Setting the value of the arms returned is critical as the value should be higher than the amount of money offered. If not, serious proliferation of arms will occur and criminals will even connive with officials to steal government stocks and resell to the same government. The approach requires careful planning and adequate measures should be put in place to proof ownership of returned weapons and also to account and secure all the returned arms.<sup>51</sup> The protection concerns are similar to those under 'Weapons in Exchange for Incentives (WEI)'.

### Other PoC concerns

It has been pointed out that practical disarmament entails many different aspects and goes beyond the mere removal of illegally held weapons in a community. The foregoing section has outlined the kind and type of protection concerns

that require to be attended to for purposes of achieving successful disarmament. Besides the actual disarmament approaches that are adopted, there are other disarmament processes that, while not directly applicable to civilians have and can impact on their security. For example, activities carried out under 'Demobilization' or 'Integration' even though directed at (Ex-) combatants can have profound impact on PoC. A few of these activities are highlighted below:

### Cantonment

Briefly, cantonment is the process of assembling combatants in designated areas in preparation for disarmament and demobilization. It is not unusual that these designated areas are public spaces e.g. school grounds. In addition, the combatants have to be transported and catered for within public spaces. In protracted armed conflicts, the trauma from violence meted out by the combatants on civilians is immense. It is natural for affected communities to want instant justice, maybe in the form of revenge, or, if not properly prepared, as hostility towards ex-combatants in cantonment. Conversely, the people in cantonment might not have had any interaction with the ordinarily people for a long time. Therefore, they may, inadvertently, exhibit emotions that are construed as hostile by the community especially if physical interactions with the ex-combatants are unavoidable. In such situations, the government must prepare and educate the civilians on the process of cantonment to mitigate potential conflict. In addition, it is possible that ex-leaders of the armed groups may take advantage of the cantonment to re-mobilise for criminal activities. This has a direct impact on the civilian population; thus, the government must set in place the right regulations to address potential protection concerns.

### Re-insertion, resettlement and reintegration

Reinsertion involves the provision of appropriate packages, either in cash or in material form, to enable people who demobilised to sustain themselves as they assume civilian life. The type and kind of packages offered for reinsertion can be a



source of conflict between the demobilized persons and the rest of the community. The community can look at the packages as a reward to people who caused their misery during the conflict. The demobilized persons might also misuse their reinsertion packages and involve themselves, for example, in the abuse of drugs or prostitution among other negative behavior.

Resettlement involves the physical translocation of those who have been disarmed and demobilized. Ideally, the resettlement should be to new environments of one's choice, but it may happen that the government selects where the ex-combatants are resettled. If the receiving communities are not properly consulted and counseled to receive the ex-combatants, conflicts will be imminent. Even where open hostility against the ex-combatants<sup>52</sup> might not be witnessed, seeds of discord are planted and can affect the intended long-term peacebuilding processes.

Reintegration of the ex-combatants is usually either into reconstituted national armies or into the society. If the reintegration is back into civilian life, there are pertinent protection concerns to be addressed. The ex-combatants might have committed grave acts of violence in the communities where they are integrated. The receiving communities might harbor genuine concerns over their security, especially given the fact that ex-combatants are not necessarily immediately absorbed into productive lives but will idle the time away and/or engage in petty jobs that do not occupy them fully. There are also issues of health. Many ex-combatants are faced with diverse health challenges including serious communicable diseases that can be easily passed on to the general public. It is important that besides tackling the necessary socio-economic needs of the reintegrated ex-combatants, the government should also address the overall political governance in the country e.g. participation, representation, sharing of resources among others, especially because this is what might have given rise to the armed conflict.

### **Rule of Law, Security Sector Reforms and long-term peacebuilding**

Realizing PoC in disarmament initiatives is greatly complemented by presence and observation of the rule of law<sup>53</sup>, comprehensive security sector reforms<sup>54</sup> and dedicated activities geared towards long-term peacebuilding<sup>55</sup>. How the rules are developed, enacted and applied impacts on the security of the population. It is important to protect communities from discrimination in service delivery, sharing of resources, political representation and in all other socio-economic and cultural interventions by government. In doing this, the concept of PoC, as envisaged in the Tiered Framework used in PSOs, will largely be achieved.

### **Challenges with PoC in Disarmament Initiatives**

PoC in disarmament initiatives faces a number of challenges; some of these are highlighted in the foregoing section on the specific disarmament approaches employed. These include, ensuring that the security of the people being disarmed is guaranteed and that adequate measures are put in place to prevent the re-circulation of surrendered or recovered weapons. The activities undertaken under the disarmament approaches; for example, under a Weapons in Exchange for Development/Incentive programme, must take into consideration the aspects of equity and equality and careful gender disaggregation among other aspects. The aim of doing this is, for example, to encourage peaceful conflict management and reconciliation and protection of human rights, which are all important for the promotion of sustainable peace.

Another challenge to the PoC is the operational environment in which disarmament is undertaken. If done in post-conflict situations the general instability and insecurity presents challenges to PoC. This is especially so, because of the many competing needs and the urgency with which the needs should be implemented. The resulting compromises in terms of resource

allocation or emphasis or thoroughness required in any one factor e.g. capacity building during disarmament, can affect the overall effective realization of the PoC.

A key challenge to PoC in disarmament initiatives can also be attributed to the specific mandate of a PSO. This can, for example, take two forms: (1) the framing and resourcing of the PSO or (2) the understanding and interpretation of the Concept of PoC. To date, there has never been a PSO that is sufficiently resourced. In addition, there is presently no universally agreed definition of PoC and the different interpretation by different stakeholders involved in a PSO can present challenges.

Probably the fundamental challenge that faces PoC especially in post conflict situations is the high expectations by the people and what the PSO mandate can actually deliver. Given that this mainly arises from the inadequacy or mismatch of the expectations and the resources allocated to the PSO, the same mis-match is transferred to the specific activities e.g. disarmament; consequently, the contribution of the specific activities to overall PoC is affected.

## Conclusion

Present day PSOs are categorical on protection<sup>56</sup> and often, the success of the missions are measured against their ability and success in the protection of civilians. The difficult in effective realization of PoC arises from many factors stemming from the diverse and unique situations under which different missions are carried out.

Within a PSO, disarmament initiatives fall under Tier Two 'Protection from Physical violence' of the framework used to realize PoC. For disarmament to be effective and contribute to PoC, there must be clear links and complementarity of activities under each of the other pillars or Tiers - Protection as part of the Political Process, Establishment of a protective environment; and, Rights-based protection. This is not always easy as different emphasis is usually given to either of the Tiers depending on the context under which the PSO is undertaken.

Fortunately, PSOs, PoC and disarmament initiatives are properly founded on various UN and AU provisions as well as national legislations. This provides the opportunity to engage with the POC concerns in every activity or intervention, such as disarmament, undertaken under PSO.

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# Theoretical Approaches to Transitional Justice and Post-Civil War Peace-building: A Thematic Survey

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## Abstract

The main aim in this paper is to dig into the literature that directly addresses theoretical questions associated with ‘Transitional Justice and Post-Civil War Peace.’ To this end, literature that speaks directly to the ‘challenges of post-civil war transitions’ is reviewed. The main focus here is the theoretical context of intra-state conflict as opposed to the inter-state domain. For starters, the discipline is rich with works that grapple with questions regarding the circumstances under which post-civil war materializes once civil wars are terminated. An analysis of extant theoretical and empirical literature on this topic exhibits *main thematic areas*- the challenges of post-civil war transitions, sustainability of interventions and the management of such interventions. The paper concludes that no single general approach explains post-conflict transitions and the entailed intricacies of post-conflict transitions all play a key role.

## To Understand War is to Understand Peace

The first thematic area has to do with works that address the challenges of post-civil war transitions as predicated on the nature of the civil wars themselves- their underlying causes, actors’ interests, ferocity, duration etcetera. These works generally contend that “*before we understand peace, we must first understand why the civil wars [and war in general] occur in the first place.*”

Social science is not short of literature on war and armed conflict. It is noteworthy however that no single discipline holds the monopoly of knowledge as far as the analysis of conflict is concerned. Some approaches are of the normative character, while others base their predictions on empirical findings. Modern political science has increasingly tended to lean towards the latter context, where theories have more often than not been judged based not only on their logical consistency, but also their empirical validity and heuristic value. When Waltz wrote *Man, The State and War* in 1959, he proposed three levels of analysis- the individual, state and international- as far as the

analysis of conflict is concerned. Following on this tradition, the *levels of analysis argument* has evolved with some works laying more emphasis on the two main levels: national (intra-state) and international (inter-state) as far as the analysis of conflict and war is concerned. As such, this study is interested in the *intra-state* context of conflict. It is noteworthy however that various theorizations associated with the inter-state context of war have found applicability in the analysis of civil wars/ intra-state wars.

Take for instance the general argument that conflict is best understood from as the result of *informational* as well as *commitment* problems. These concepts have been variously invoked to explain why international conflicts happen, why they persist and further how they end and/or can be prevented from recurring. Some theoretical approaches present war as the result of uncertainty occasioned by informational as well as commitment problems (Danilovic and Clare 2010). Various strands of theory illuminate these domains from different premises. On the whole however, conflict (whether inter-state or intra-state) occurs, persists and recurs not because of material and

motivational factors *per se*, but because actors have private knowledge on the actual nature, extent and intent behind these factors. This is the province of the theories of deterrence and crisis bargaining, which associate war with the inability to pass information about capabilities, resolve and how much cost adversaries are willing to bear in a conflict. Deterrence theory approaches the information problem by asking: how best can one party credibly convince another to alter their position on a certain action they are planning to take (Schelling, 1966: 35). Sescher (2010, 627) contributes to this debate by arguing that military strength contributes to the information problems that make challengers more likely to underestimate their targets' reputation costs and insufficiently compensate them, thereby undermining the effectiveness of threats. The result to violence is supposed to communicate the resolve and capability of such a state to the adversary and perhaps make the adversary change their mind about the *type* of opponent they are challenging (Chan, 2010). Wagner (2000, 478) however argues that in the context of war, fighting as a source of information can be very costly.

Under conditions of equal chance of winning or losing a contest, informational uncertainties about relative bargaining power are heightened, leading to disagreements about which side is going to win a war (Huth, 1988: 438-439). Further, war can last longer if the bargaining process is unable to resolve informational uncertainties during the war- hence war becomes an extension of the bargaining process. Hence, from a *rationalist* point of view, war results from private information and incentives to misinterpret it (Slantchev, 2003: 123).

Fearon (1994) on the other hand pegs the prevalence of war on the degree to which leaders are able to convey or signal credible commitments and resolve- especially to their domestic constituencies. Since, they would pay high "audience costs" if they fail on their policy promises and/or stances; democratic leaders are better able to signal resolve, a fact that

other democracies would take seriously, hence avoiding war amongst democracies. Non-democratic leaders have little or no "audience costs to pay" and that their policy failures may therefore be inconsequential and neither their non-democratic counterparts, nor democratic adversaries would take them seriously, since their war declarations lack the ability to credibly communicate resolve.

Fearon (1995, 381) singles out miscalculation due to lack of information. War occurs because rational leaders may miss the opportunity for a negotiated settlement when lack of information leads them to miscalculate relative power or resolve. Refining his position further in order to give it stronger empirical validity in terms of causal logic, Fearon (1995, 381) points to lack of private information about the relative capabilities or resolve and incentives to misinterpret such information. The cause of war is not simply lack of information- since the parties to the conflict can in principle communicate to avoid costly miscalculations- but specifically, whatever it is that prevents the disclosure of this information (Fearon, 1995: 391). Incentives to misinterpret military strength can undermine diplomatic signaling, thereby forcing states to use war as a credible means to reveal private information about their military capabilities (Fearon, 1995: 400). To overcome informational barriers, leaders credibly communicate their interests to their adversaries through what he calls "hands tying" or simply employing sunk costs (Fearon, 1997: 68; [see also] Morrow, 1999: 86). This debate is extended further by the likes of Bueno De Mesquita et al (2003) who argue that due to the openness of democratic systems to each other and the ability to read into each others' intentions [thus better overcome informational problems] by virtue of widely shared democratic values that cut across societies, democratic leaders and their citizens can easily avoid war amongst themselves. Nonetheless, because such qualities may be lacking in non-democracies, war is more probable between them and democracies ([See also] Snyder and Bourghard, 2011).

More importantly this line of theorization soon found its way into the scientific analysis of conflicts at the intra-state level with emphasis being laid on why they persist (civil war duration), how they end (civil war management and/or termination); as well as how to ensure that the peace that obtains thereof is secured in terms of preventing reversion to full-scale war and guaranteeing sustainable peace. Numerous studies utilizing a case study approach have documented human rights atrocities in civil wars- a trend that gained momentum with challenges occasioned by the Cold War and its aftermath (Elbadawi et al, 2008). As Salehyan and Thyne (2012, 196) recall; “Zartman (1989) offered one of the earliest and most influential theories of civil war duration and termination. He argued that the conflict persists until neither side believes that it can achieve unilateral victory and continued fighting is costly. Under [such] conditions, [of] a ‘mutually hurting stalemate,’ the civil wars [is said to be] ‘ripe’ for resolution.”

Nonetheless, another body of research that falls within the domain of what Mitchell, Diehl and Morrow (2012) term the “Scientific Study of International Processes (SSIP)” sought to extend this debate by empirically testing similar theories concerning the duration [and termination] of civil-wars, using large-N analyses utilizing replicable datasets. Collier et al (2004) for instance used hazard function regressions to test a wide range of hypotheses that empirically explored the duration of civil war. Similar works include, Karl and Sobek (2004), Fearon and Laitin (2003), Fearon (2004), and Hegre (2004), Walter (2004) as well as Humphreys and Weinstein (2008). Fearon and Laitin (2003) examined questions to do with ethnicity; while Fearon (2004) asked “why some civil wars lasted longer than others.” Humphreys and Weinstein (2008) grappled with issues to do with why those who choose to participate in these deadly conflicts do so. Further, the ferocity of conflicts and the “issues at stake,” say territory, contention over precious minerals such as oil and diamonds (DeMerit and Young 2013, 100-102).

The degree of ethnic fractionalization, regime type and the presence and/or interference of third parties (local and/or international) have been invoked to explain whether or not the peace that obtains will hold (Gurses and Rost, 2013: 469-475). Though these works do not directly speak to assorted issues associated with post-conflict peace, they constitute important reference points for a scholar interested in understanding how to address the challenges associated with theoretically explaining and accounting for transitions from war to peace.

It is noteworthy that the normative theoretical perspectives on peace are worth discussion too. Some classical peace theorists contend that peace is not simply about the absence of war. “True peace” is about the *positive* aspects of peace. When the structural and/or deep sources and/or roots of conflict such as poverty, inequality and general human insecurity are present, then peace is lacking, and such a state of affairs is a sure recipe for conflict. On the other hand, *negative* peace is about the basic and/or minimum pre-conditions for peace-situations where there is no physical violent attrition between actors. To the normative peace theorists, more often than not, conflict managers and empiricist arguments for peace at times “miss the point” by stressing only what can be measured and evaluated quantitatively; thereby failing to appreciate the positive aspects of peace (Galtung, 1996:14).

### **Sustainability of Peace is Dependent on the Dynamics of Conflict Termination**

The second major thematic area in this literature is associated with works that address issues revolving around the idea that “*how the peace is made, or better still, how the war ends will likely determine how far the peace that obtains lasts.*” Various themes characterize the literature on the durability of post-civil war peace, why it fails or prevails (Hartzell and Yuen, 2012). It is important to keep in mind that civil wars (and wars in general) can end in ways and under

different circumstances. It can be a one-sided victory, where one party prevails in imposing its will on the other and dictating the terms of the peace that follows. In similar fashion other cases a challenger may succeed to overthrow the status quo and compel its adversary to toe the line and abide by the new terms. However, for the most part (which is why many tend to assume is always the case), many civil wars end-up in some form of truce, concession making and mutual compromises- peace agreements. Nonetheless, in many cases, the processes of arriving at these compromises and their implementation can be quite convoluted and may not end-up achieving “water-tight” peace outcomes (Desiree, 2008; De Rouen Jr. et al, 2010).

In this direction, many works have paid special attention to how the management and resolution of the conflicts has been handled. Here, issues such as informational uncertainty and concomitant commitment problems on the part of the warring parties have been raised. By extension, specific issues such as third party presence and/or intervention as well as questions of mediator bias have featured in these debates (Balch-Lindsay et al, 2008). Most of these works tend to argue that disputants abrogate peace agreements due to a commitment problem (Hartzell and Hoddie, 2003). When armed conflicts break out (whether inter-state or intra-state), international efforts to either forcefully or peacefully bring the conflicts to an end are usually made. Peaceful third party involvement through mediation is one such process (Crocker et al 2005:21; Bercovitch and Gartner, 2005:5; Beber, 2012). Mediation has been found to be a favorable process in settling armed conflicts (Gartner and Bercovitch, 2006; Dixon 2009; Beber, 2012:397). It is noteworthy that mediation is just but one of the channels of third party intervention in a conflict; be it inter-state or intra-state in nature. Nonetheless, debate on whether or not mediators (and/or other third party interveners) should be biased is rife in recent works on conflict management and resolution (Bercovitch 1996; Gartner and Bercovitch; 2009; Benson and Kathman, 2013).

Beber (2012, 399) for instance notes that; “while scholars such as Fisher (2005), Rauchhaus (2006) and Gent and Shannon (2011) find mediator bias unfavorable for effective dispute resolution, others such as Touval (1982; 1985), Touval and Zartman (1989), Kydd (2003; 2006), Zartman and Touval (2007), Savun (2008) argue that “biased mediation can be and often is effective” (Beber, 2012: 399). Others such as Favretto (2009) contend that a biased mediator- particularly a powerful one[see also, Regan 2002]- can successfully facilitate negotiations; while Svensson (2007) maintains that in the context of an intra-state conflict, a government oriented bias on the part of the mediator may be more fruitful than one oriented towards the rebels. According to Beardsley and Lo (2013, 2) “when asymmetric concessions are needed to resolve a dispute, this creates, inter alia, stark commitment problems for the defending side and stark audience constraints for the challenging side.” They argue that third party conflict management- especially that involving dispute resolution and mediation of the mutual concession but binding kind- has the potential of enabling disputants to agree to certain terms that they would not have otherwise agreed to (asymmetric concessions); and this is because they enable the leaders and/or key actors in the dispute to overcome commitment problems through the provision of political cover.

Taking on the trend of theorizing set by the likes of Zartman (1989) as well as, Walter (2002) argued that once actors experience the “hurting stalemate” and an agreement is negotiated, implementation problems set-in; and these are due to commitment problems. Further, Steadman et al (2002) reiterated that this line of theorizing emerged in the 1990s when various scholars engaged in debates to do with “*why peace agreements fail or succeed*”. Most of these works took a case-by-case approach to the topic. Also, they were based on the theoretical premises associated with how to overcome the security dilemma and related commitments problems revolving around building confidence and trust among the warring parties in civil war



situations (Steadman, Rothchild and Cousens, 2002). One such work by Hampson (1996) for instance, approached the question of ‘why some peace agreements fail while others succeed’ by attempting a “controlled comparison of five case-specific scenarios. Two (Angola and Cyprus) failed, while two (Namibia and El Salvador) succeeded, with the fifth (Cambodia) being treated as a partial failure. From this study, Hampson (1996) associated success of peace agreements with a couple of important factors. He singled out an enabling international environment in terms of nurturing the peace as crucial to the success of peace agreements. By extension he argued that the position of the more powerful states (say regional and/or international hegemonies) would also count. The other issue raised was the timing of the agreement; thus, “was the conflict ripe for settlement?” and finally, “how inclusive is the agreement?” In other words, “does it factor-in some power-sharing arrangement or not?”

To Walter (1999; 2001) however, one of the major problems bedeviling the implementation of peace agreements was “the inability of the parties to it, to commit” especially when it came to the critical questions of “disarmament and demobilization” in the immediate period following the civil war. Further, she argues that one of the major problems that face actors in such situations is some kind of “insecurity.” To overcome the said “insecurity,” the presence of a third party who plays the role of an “assurance guarantor” is of the essence. Nonetheless, Walter (1999, 2001) cautioned that addressing the underlying grievances and/or issues behind a conflict does not always guarantee that the parties to the conflict will honor a peace agreement. Hence, beyond the underlying issues such as land and the resources in it and power-sharing etcetera, the thought that downing their tools of war would render one vulnerable in the eyes of their adversaries can easily put the entire peace agreement implementation in jeopardy. Yet other works within this cohort pointed to the importance of proper coordination during the mediation process and implementation of peace

agreements; as well as the need to be aware and to address the potential impact of “spoilers” in the process of implementation of the peace process. These are actors who for material, ideological or political-strategic reasons seek to prevent the fruition of the peace agreement (Steadman, 1997: 5; Steadman et al 2002).

Several works have empirically sought to address issues of the informational problem demonstrating how informational asymmetries can be overcome (Mitchell and Regan, 2010). Some conflict management techniques or strategies can be more effective in helping disputants overcome informational asymmetries. The most potent in this direction are communication, mediation and adjudication (Dixon, 1996: 676). In an empirical examination of the causal underlying mechanisms of mediation, Rauchhaus (2006) offers an alternative explanation for the effectiveness of mediation by pegging it to the informational problem. Upon setting forth a formal model and quantitative analysis to explore the relationship between mediation, asymmetric information and war his analysis reveals that mediation is a highly effective form of conflict management. An important gain of this work is that mediation targets asymmetric information, thereby transmitting critical information about disputant’s reservation points. By so doing, the mediator can help the disputants avoid bargaining failures that result from asymmetric information (Rauchhaus, 2006: 223-224).

Favretto (2009) shows how the relationship between mediation and military coercion can be used to understand how powerful biased third parties may help convey private information about their resolve under conditions of uncertainty and the extent to which this information can influence the resolution of crises. On the contrary, to Berber (2012, 400) biased mediators are relatively less effective at resolving disputes than their unbiased counterparts because only an unbiased mediator can credibly share conflict relevant insights. Greig and Diehl (2005) contend that peacekeeping circumvents

informational problems which would have otherwise been made clear if the conflict is let to run its full course as well as “easing” the hurting stalemate effect that makes conflicts costly (Greig and Diehl, 2005: 629). Gent, Stephen, and Shannon (2010) show how the relationship between bias and effectiveness can be better understood by examining a wider range of conflict management strategies.

Fortna (2004) explores the causal mechanisms through which peacekeepers might affect the durability of peace by empirically examining whether peace lasts longer when peacekeepers are present than when they are not. As far as the informational problem is concerned, the study is applicable only to the extent that peacekeepers- by playing the role of referee- are able to facilitate information between disputants following the signing of a ceasefire agreement thereby enhancing the possibilities of a lasting peace; and also, they play an inherent mediation and day-to-day conflict resolution role (Fortna, 2004: 585-486).

Doyle and Sambanis contend that successful and unsuccessful peace efforts to resolve civil wars are influenced by three key factors that characterize the environment of the postwar civil peace: “One; the degree of hostility of the factions (measured on terms of human costs- deaths and displacements- the type of war, and the number of factions); two, the extent of local capacities remaining after the war (measured for example in per capita GDP or energy consumption), and; three, the amount of international assistance (measured in terms of economic assistance or the type of mandate given to a UN peace operation and the number of troops committed to the peace effort)” (Doyle and Sambanis, 2006: 63-68).

On the other hand, issues such as inclusiveness of peace agreements have been central to such endeavors, with peace agreements that ostensibly fail to bring on board all the actors in the conflict and their grievances and/or interests being blamed for the failure of the

peace agreements borne out of the negotiations thereof, hence poor design of peace agreements (Steadman, 1997; Mattes and Savun, 2010). However, other works are specifically interested in the question of why peace agreements fail or succeed; as well as to account for factors behind the sustainability (or lack of thereof) of peace following the formal agreements between warring parties. Most of these works tend to argue that disputants abrogate peace agreements due to a commitment problem (Hartzell, Caroline and Mathew Hoddie, 2003).

Meernik (2005, 271) notes that the reconstruction and maintenance of peaceful communities in the aftermath of conflicts is one of the most critical areas of academic and policy concern. In his study of how “internationally provided justice contributes to the maintenance of peaceful societies” Meernik investigated the efforts of the International Criminal Tribunal for the former Yugoslavia in providing justice to the people of Bosnia and Herzegovina. Meernik’s study utilized “event data from the Kansas Event Data System to investigate the extent to which the arrests and prosecution of war criminals had on the improving relations among Bosnia’s ethnic groups.” To this end, he found no statistically significant effect of such retributive measures on peace in Bosnia

A similar study by Kanavou (2006) sought to understand how decisions to sign peace agreements are reassessed by the by former signatories and how conflicting parties adapt to the demands of the peace processes from the context of value-frames held by the stakeholders representing ethnic groups in a particular conflict. Other works are dedicated to understanding the actual mediation process (Svensson, 2007; Blach-Lindsay et al, 2008). Collier et al (2008) undertook a study to determine the circumstances under which there is high or low risk of post-conflict societies reverting back to war. They found that the severity of risk of renewed war after the signing of a peace agreement is predicated on factors such as income levels, external military

presence and political design in the immediate post-conflict period.

While employing survival models Hartzell and Hoddie (2003, 18-23) for example find that the more aspects of power sharing are factored in the negotiations for peace, the more likely the peace would endure; while (Gurses and Rost, 2013: 469) find that ethnic fractionalization may negatively impact on peace duration but their findings discount the effect of the “ferocity” of conflict. To Mates and Savun (2012, 511), the duration of post-civil war agreements can also be determined by the degree to which the peace agreements so designed, help the warring parties to reveal information to an extent that they are certain about each other’s military capabilities- hence, the less the uncertainty, the more likely the peace will last.

### **Sustainability of Peace is Dependent on the Management of Transitions from Civil War**

The third main emergent thematic area on the ‘challenges of post-civil war transitions discourse’ is one that somewhat partly raises issues associated with the first as well as the second themes afore discussed. It links issues to do with “*how the civil wars are conducted, and who they affect*” on one hand, with “*how the effects of such conduct is factored into the peace that is supposed to follow the immediate end of the war; which in turn determines if the peace holds or not.*” This debate is associated with a particular area within the broader international human rights and humanitarian law discourse- *the transitional justice-peace nexus*.

It is noteworthy that the theme of transitional justice is just but one among many areas and/or subjects that constitute the broad rubric of human rights, international humanitarian and/or human rights law (Paige, 2009:328-334). Human rights issues are a major area of concern in the analysis of war, its termination and short-to-long-term ramifications; with various rules and standards of engagement

and procedural matters being engrained in international humanitarian law in general and human rights law in general, during the post-Second World War period. For starters, there appears to be not much contention in the literature about how the concept of transitional justice came about.

Hence, the concept of ‘transitional justice’ came to the fore in the late 1980s and early 1990s in response to the dilemmas occasioned by regime change from various forms of authoritarianism towards more democratic governance. In this regard, the International Centre for Transitional Justice (ICTJ, 2009: 1-2) defines transitional justice *rightly so*, thus:

“Transitional justice is a response to systematic and widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over decades.” (ICTJ, 2009:1).

The bone of contention in those years was how to address the gross human rights violations committed by past regimes such as those in former communist Eastern Europe, military juntas in Latin America, and racist regimes such as the apartheid system in South Africa (Malamud-Goti, 1990; Niel, 1995; Linz and Stepan, 1996; Stan and Nedelsky, 2013). As ICTJ (2009, 1-2) notes further “at the time, human rights activists and others wanted to address systematic abuses by former regimes but without endangering the political transformations that were underway. Since these changes were popularly called *transitions to democracy*, people began calling this new multidisciplinary field *transitional justice*.” Subsequently, governments were increasingly encouraged to honor their human rights commitments. The 1988 ruling on *Velasquez*



*Rodriguez v Honduras* at the Inter-American Court of Human Rights (IACHR) important responsibilities of governments as far as human rights were reaffirmed; thereby setting pace for “depolitization of the human rights discourse,” and further adoption principles in other jurisdictions including the UN Human Rights Commission, and the European Court of Human Rights (Grossman 2007, [in Noyes et al 2007, 104-113]).

In the same vein, a good number of academic works within the neoliberal institutionalism realm (what has come to be termed *compliance literature* of the “regimes and institutions” kind) took a centre stage in the field (Chayes and Chayes, 1993; Moravcsik, 1995; Simmons, 1998; Martin and Simmons, 2001; Simmons, 2005 and Hathaway, 2007). The main bone of contention in these works has over the past two decades or so been whether or not the international commitments states make (say by signing and ratifying human rights treaties) were able to meaningfully alter their behavior more so in the context of enforcing compliance with human rights treaties (Hathaway, 2007); (Hill 2010, 1161-1163). While some works have painted a pessimistic picture as to how far human rights regime commitments can be enforced (Abouharb and Cingranelli, 2006), (Allen and Lektzein, 2012), (Nooruddin and Autumn, 2010); others are quite optimistic that selective compliance enforcement mechanisms such as unilateral economic sanctions hold the potential to enforce human rights treaty compliance while general multilateral sanctions are found to be much less effective (Von Stein, 2005); (Neumayer, 2005); (Lebovic and Voeten, 2009); (Peksen, 2009).

An important development within this literature came with the establishment of formal international institutional mechanisms, most notably the Rome Statute that in 1998 established the International Criminal Court (ICC), a retributive form of transitional justice in its own right, due to its punitive and/or deterrent quality- *international trials*.

Subsequently, a substantial number of works have over the past decade or so, sought to examine whether or not the presumed deterrent effect of the ICC was likely to improve human rights especially among countries that were emerging from deadly civil wars in the 1990s and after (Gillian 2006; Schabas 2011; Sikkink, 2011; Bikundo, 2012; Dukalskis and Johansen 2013). One important theoretical domain in this line of thinking is that known as the *credible commitments* approach. Precisely, the *credible commitments theory* holds that states sign onto human rights treaties such as the Rome Statute or the International Convention on Civil and Political Rights (ICCPR) in order to convey certain signals concerning their degree of commitment to the issue in question- in this case, human rights compliance (Rodman and Booth 2013, 273-277).

These developments in the literature depict a redefined and broadened conceptualization of transactional justice. It is a conceptualization that not only addresses human rights violations by past regimes, but more importantly, one that also stresses the importance of addressing human rights violations committed during brutal civil wars and to prevent such episodes from recurring (Minow, 1998; Olsen et al, 2010). In reference to Tietel’s (1991, 2000) examination of the phases that transitional justice underwent since the early 20<sup>th</sup> century, Skaar, (2011, 6) notes, “in [its] current phase...transitional justice has become an established component of post-conflict processes.” Olsen et al (2010, 803) further add that “societies *emerging from periods of state repression and armed conflict* have pursued a variety of processes. The array of mechanisms available to states [is] collectively referred to as transitional justice.” As Barr (2011:11) recalls

“The list of mechanisms commonly associated with transitional justice has grown to include: prosecutions at the international, hybrid and national levels; truth and reconciliation commissions; sanctions; customary justice; public apologies; [for example the *Gacaca* Courts in Rwanda] memories and vetting (or lustration).”

Nonetheless, this new outlook within the transitional justice research program has since engendered widespread debate, contention and disagreement about what transitional justice meant in the first place and what it meant to achieve (Call, 2004; Leebaw, 2008). This view is echoed by Skaar (2012, 60) who adds that “transitional justice is now seen as a *driver* of transition rather than only as interventions that follow a transition. Its goals have become far more ambitious and less easily reconcilable with each other.” This paradigmatic shift and controversy in the theoretical conception of the term has been occasioned by the fact that the concept is viewed in some quarters as “*once again, threatening*” the “sovereignty zone” (as was the case with the regime changes of the late 1980s and 1990s) especially in political systems around the world that resiliently clung-on to authoritarian and/or pseudo-democratic tendencies (Sikkink, 2011). In such countries, brutal acts of misrule and gross human rights violations directed mostly in civilian populations still remain “a fashionable” means to gain, maintain and sustain power and influence (Thakur and Malcontent, 2004; Kalyvas et al, 2006; Wood, Kathman and Gent 2012).

As such, two broad but interrelated contexts of transitional justice processes or mechanisms can be identified: retributive and restorative forms of transitional justice. The retributive transitional justice mechanisms of transitional justice mainly constitute trials. For a long time since Nuremberg, these trials took place within the domestic jurisdiction of states. The contentious issue about domestic trials is the extent to which they can be effective and/or genuine given the fact that it is not imaginable that a regime, once it ascends to power following a brutal civil war, can put itself or its sympathizers on trial for crimes against various war crimes and crimes against humanity among other gross human rights violations categorized as international crimes.

More often than not, such trials would only target the opponents of the regimes in power,

hence engendering vicious cycles of “victor’s justice.” Considerations of these eventualities especially in the context of post-civil war transitions, partly informed the establishment of Special Tribunals of the 1990s and ultimately, the ICC which formally began its work in 2002 (Schabas, 2004). In addition to trials, other another form of retributive transitional justice is *lustrations*. Lustrations are formal policies that are meant to vet and “weed-out” and formally disable and discourage persons who have in one way or another been participated in gross violations of human rights especially in the context of civil wars.

Restorative mechanisms on their part include *truth commissions, reparations and amnesties*. These mechanisms are non-punitive and reconciliatory in character. It is noteworthy that just like in the case of trials; amnesties have also been variously contested due to the fact that they can be abused to the advantage of the very persons behind human rights crimes (Elster, 2006; Nagy, 2008). The debate in the literature has been on whether or not these mechanisms should be applied separately, sequentially or concurrently. Further, more critical questions have been posed concerning if “*transitional justice is really just*” and how do we tell that justice has been achieved and within *what timeframes*, since “transitions cannot be indefinite. In the same vein, critical questions of *transition from what to what* also pervade the literature (Call, 2004). Yet another important issue is that of the *levels of transitional justice*. Here, qualms have been raised concerning how domestic transitional justice mechanisms such as local trials [and alternative local justice systems such as the *Gacaca* Courts in Rwanda] or truth mechanisms and wider institutional reforms are in harmony with international process including purely trial settings such as the ICC as well as hybrid tribunals (Schabas, 2003; Apatel, 2009; Steiner, Alston and Goodman, 2007:1243-1379).

From the foregoing three major *competing* theoretical approaches to transitional justice

have emerged- the *legalist*, *emotional-psychology* and the *pragmatic* (Vinjamuri and Snyder, 2004; Nobles, 2010). Some scholars such as Olsen et al (2010) and Rieter et al (2012) have referred to the legalist approach as “*maximalist*” and the emotional-psychological approach as “*minimalist*”; while the *pragmatic* argument is referred to as “*moderate*.” In other quarters, some works go beyond the pragmatist or moderate arguments and argue for a “*holistic*” approach, which somewhat proffers a combined and complementary effect of the legalist (maximalist) and emotional psychology (minimalist) and pragmatic (moderate) views. From a holistic standpoint, every mechanism counts and is best seen as complementary to the other. It appears therefore that the pragmatist approach prescribes various permutations and/or combinations of the both retributive and restorative mechanisms, while the holistic approach argues for an exclusion of none and inclusion of all.

According to the *legalist* approach, justice for the victims is only met when the perpetrators of human rights atrocities during civil wars are prosecuted and punished through retributive mechanisms- mainly local and international trials (Vinjamuri and Snyder 2004, 346-352); (Nobles, 2010). On the other hand, according to the *emotional psychology* approach, true justice is reconciliatory and restorative. This is best guaranteed when both victim and perpetrator reconcile- a process that is made possible through restorative mechanisms that include truth commissions, reparations and amnesties. After all, they argue, it is not practically possible to put everyone on trial (Vinjamuri and Snyder 2004, 357-359).

Finally, according to the *pragmatist* approach to transitional justice the reality of *post-civil war justice and peace* is that it must strike a delicate balance between justice (in the more general negative peace sense), and the more crucial positive- sustainable peace (Vinjamuri and Snyder in, Steiner, Alston and Goodman, 2007:1333-1334). The pragmatist approach

somewhat builds on the strengths of both the legalist and emotional psychology approaches. While perpetrators of human rights violations in the civil war must be punished; justice and lasting peace must also consider the fact that specific political and economic aims of elites who fund and sustain civil wars must be considered. Further, reparations for victims are important, while minimizing (but not doing away with) on trials among other punitive measures, and maximizing on healing and reconciliation (Vinjamuri and Snyder 2004: 352-357); United States Institute for Peace-USIP, 2008).

While “*justice, truth and peace* in a post-conflict are often presumed to be mutually reinforcing goals; unfortunately during [such precarious and potentially insecure periods, these goals] often come into conflict” (Binningsbo et al, 2012:732). It is imperative upon any student of conflict analysis to be aware of the fact that these approaches present competing logics, with each presenting a counter argument against the other. Hence, depending on “who you ask,” several arguments may be made that either paint one of the approaches in the positive or negative or otherwise (in relation to the other). For instance, there is the argument that arrests, indictments and jail sentences may cause perpetrators and their supporters to fuel more conflict by inciting fresh spates of violence.

Further, while on trial, the perpetrators of human rights abuses in past wars may whip-up emotions among their supporters and reignite violent conflict and further undermine the peace. At times, high profile personalities under trial may be portrayed as “martyrs” and symbols of “collective victimization or alienation” (Thoms, Ron and Paris, 2008:7); of their tribes, community, ethnic group, region and so on. Further, other potential perpetrators (spoilers) of human rights violations may take advantage to “spoil” for the peace and blame it on the trial of “important” personalities.

Another argument may be floated thus: holding a few persons individually criminally

responsible may be an indirect exoneration of many others who acted under their supervision and/or command...hence creating an escape route from justice- a counterproductive move. Conversely, the arguments may be made that: at times, the truth and justice processes may actually provide “cover” for human rights abusers to continue with their schemes and use them as “escape routes” from retribution for past atrocities. In other cases, amnesties (especially blanket ones) have been seen as avenues of convenience to circumvent justice. In fact, such amnesties are not permitted in international law especially where they involve war crimes, torture, genocide and other serious international crimes (USIP, 2008; ICTJ, 2009).

To yet others, telling the truth and setting the record straight may also be counterproductive as it may open “healing wounds” by rekindling “unwanted” emotions and threaten to or actually lead to a resurgence of violence and abuse of human rights. In other instances amnesties have been said to “undermine long-term peace and contribute to recurrence of violence” especially if they are undertaken to circumvent justice (Skaar, 2011:15). Finally, TJ processes in general may suffer procedural and contextual bottle-necks and/or flaws, thereby having a counter-productive effect especially when they fall short of meeting their goals (Thoms, Ron and Paris, 2008).

All in all; in an examination of “the field’s state of empirical knowledge as far as the impact of transitional justice on human rights and peace was concerned, Thoms, Ron and Paris (2008: 4) noted:

“there is little evidence that TJ [Transitional Justice] produces either beneficial [positive] or harmful [negative] effects. Few rigorous analyses of TJ have been completed to date, and the best of these studies acknowledge the difficulty of reaching *any* strong conclusions about the effects of TJ across cases due in part to the limitations of existing data.”

Nonetheless, in their analysis of the research trends, Thoms, Ron and Paris (2008:5), remained optimistic in that “future TJ [was] likely to produce more reliable findings.” Hence, the trend in the literature over the past decade or so has been around the analysis of a particular transitional justice mechanism using either qualitative or quantitative research designs based mostly on small-*n* case-specific/country-to-country analyses (Olsen et al, 2010:804; Binningsbo et al, 2012:732). Subsequently, others have sought to examine various research questions associated with the retributive context of transitional justice with some examining local prosecution processes while others have examined regional and/or international prosecutions. The main debate in these works has been “to prosecute or not to prosecute? Between prosecuting and pardoning, [or both] which best delivers justice?” (Pion-Berlin, 1994; Osiel, 2000).

To yet others, both restorative and retributive mechanisms when employed concomitantly can achieve justice and lasting peace (USIP, 2008; Skaar, 2011). Subsequently, a cottage industry around these themes has grown, mainly based on case-specific single country studies of both the qualitative or quantitative kind; but also fewer large-*n* multi-country empirical works: Hayner, 1994; Roht-Arriaza 1995; Mendez, 1997; Gates et al, 2003; Schabas, 2003; Vinjamuri and Snyder, 2003; Mendeloff, 2004; Wilson 2005 and Zoglin, 2005; Gillian, 2006; Sikkink and Walling, 2007; Ratner, 2009; Clark and Kaufman, 2009; Kim and Sikkink 2010; Olsen et al, 2010; Bikundo, 2011; Bratton, 2011; Sikkink 2011; Ross and Sriram, 2012; Rieter et al, 2012; Clark, 2012; Rodman and Booth 2013, to mention but a few.

Hayner (1994) for instance carried out a comparative case study of Truth Commissions across fifteen countries between 1974 and 1994. Employing a descriptive qualitative approach, this study eloquently brought to light the pros and cons of truth telling and reconciliation as a restorative transitional justice mechanism.

Important questions to do with “whose truth, when, how and to whom it is told” are brought to light; and so did those to do with the human, material and institutional challenges that have faced such processes. As similar study was conducted by Brahms (2006) who examined the effect of truth commission on human rights and democracy in a cross-national study involving 78 countries for the period 1980-2003.

He came to the conclusion that truth commissions had only a marginal effect on human rights. Snyder and Vinjamuri's (2003) analysis of truth and justice processes however revealed a more positive impact as far as human rights was concerned (*See also*, Thoms, Ron and Paris, 2008:13). Bratton (2011:353) employed a national probabilistic survey on Zimbabwe that sought to determine “what determines people's willingness to consider punishment for human rights abusers.” Bratton established that the proclivity to talk and share views and deep feelings on the part of ordinary citizens depends not only on their experiences in the conflicts but also on the political circumstances- a factor that is utilized by critics of the emotional psychology (minimalist) approach's restorative argument. Skaar (2012, 57) adds that “no existing statistical study has attempted to gauge the impact of transitional justice mechanisms on reconciliation [adding that]; this is where the scholarly knowledge of...stands at the moment.”

The work by Gillian (2006) was perhaps the first in the field to test the legalist approach using quantitative techniques of the *formal modeling* kind. It also extended the general human rights compliance debate- *though not explicitly*- into the transitional justice domain. In an article published in a leading journal in the field, Gillian took note of the sentimental debate in scholarly circles as to whether enforcement mechanisms were necessary to make international human rights regime effective. He expressly declared that his work provided “a model of the ICC in which the Rome Statute regime held the potential to alter states behavior even though it possessed no

enforcement mechanisms.” His model helped answer several prominent criticisms of the ICC. One particular criticism that Gillian's work potentially proved inaccurate was the claim that the ICC was at best futile because it lacked the power to apprehend the criminals it is meant to prosecute and because it induced atrocious leaders to cling on to power for fear of prosecution on the part of the core regime members. Gillian offered a “rational choice model of an international institution that alters states' behavior even though it is not enforced by trigger strategies or any other external mechanism” (Gillian, 2006:938).

The regime modeled by Gillian “did not guarantee failure to comply but provided compelling evidence that compliance can occur to the extent of deterring atrocities at the margin.” In short Gillian's model contributed to both policy debate and theoretical literature on human rights compliance enforcement, with specific reference to the ICC. As such, “while the model offered no hope that the creation of the ICC would bring about a world free of atrocities, it did offer a set of conditions under which there would be marginally fewer atrocities thanks to the presence of the ICC” (Gillian, 2006:938).

Sikkink and Walling (2007), attempted an empirical examination of both trials and truth commissions in the context of Latin America. Their findings seemed to challenge the notion long held in the literature, that trials could jeopardize peace processes and that they could not be administered alongside restorative mechanisms particularly truth and justice processes. As a follow-up to this study, using a new data set that included 100 transitional countries, Kim and Sikkink (2010:939) sought to explore the deterrent effect of human rights prosecutions on repression. Their theoretical argument was informed by the premise that “the impact of prosecutions is the result of both normative pressures and material punishment.” Their findings suggested that human rights prosecutions hold the potential to improve



human rights in transitioning countries- including 16 states that were transitioning from civil war- by “enforcing existing human rights laws” (Kim and Sikkink, 2010: 957). As far as this study is concerned, these early works by Sikkink and Walling as well as Kim and Sikkink (2010) served as valuable pointers in providing a basis for broader investigations on the singular and/or collective effect of various retributive and restorative transitional mechanisms or both.

The findings by Sikkink and Walling (2007) were echoed by Bikundo (2012:21-41) who made an empirical investigation into the causal link between international criminal trials and the prevention of human rights atrocities through what he termed “exemplary justice” in the African context. Of specific interest to this study in the question he charges thus “how the prosecution of those bearing the greatest responsibility binds recurrent conflict.” In this direction, Bikundo points to two important domains of inquiry that have dominated the retributive transitional justice research program in the past half-decade or so. One; the “question of whether or not a criminal trial relying on individual criminal responsibility can prevent the recurrence of mass violence [...and gross violations of human rights]; and Two; “the ambiguity of how a universal court...only has cases from a single continent” (Bikundo, 2012:22). While this second domain of inquiry is interesting, it is not of specific concern to this research. However, the first sheds light into the core question under investigation herein. Is it true that this new instrument of retributive transitional justice- ICC- has any real influence on state sovereignty?

Further, is it possible that due to the establishment of this robust sub-regime that can “topple governments, jail once-powerful presidents, and cause tyrants to pause before committing war crimes” (Call, 2004:102); human rights trends have improved among states whose cases have been handled by the ICC as well as all other states that fall within

its jurisdiction? In this direction Dukalskis and Johansen (2013) recently developed a measure to help understand the nuances associated with the acceptance by states, of the ethos behind key human rights treaties, particularly the Rome Statute which established the ICC. To this end, they developed the Normative Disposition Indicators (NDI); a 30-point (-15 to 15) scale, and applied it to five major contexts- the US, and four Asian states- in terms of their stances towards the Rome Statute. The import of this study is that it makes a worthy contribution as far as probing the degree of compliance (or otherwise) non-compliance with the international human rights treaties states commit to.

Sikkink’s own *The Justice Cascade* (2011) introduced an interesting twist in to the transitional justice program. Sikkink’s work challenged earlier beliefs that retributive forms of transitional justice (mainly local, international and hybrid trials) had a negative effect on human rights compliance. Sikkink’s study reveals that retribution not only punishes and deters potential human rights abusers, be they sitting governments or rebels seeking to capture power; but also engenders more institutionalized national, cross-regional and global value systems that fortify a fast solidifying human rights culture- a situation that obtains less repression and peace through enhanced compliance with the human rights treaty obligations of states (*See also* Vinjamuri, 2012; Sandholtz, 2012:17). As Mendeloff (2012, 289) in a review of Sikkink’s *The Justice Cascade* notes:

“Relying on a dataset of human rights prosecutions in transitional countries from 1980-2004, she [Sikkink] challenges the skeptical view that national and international prosecutions are potentially destabilizing and should be avoided in favor of amnesties allowing for smoother transitions from...civil war. She finds to the contrary that states with transitional human rights prosecutions have lower levels of repression than those without them.”

Perhaps the first large-*n* quantitative study, in which the duration of peace in particular, was the outcome variable as predicated on a wide range of transitional justice mechanisms; was that conducted by Lie, Binningsbo and Gates (2007). Utilizing a dataset consisting 187 countries for the period 1946-2003, they arrived at findings that suggesting that on the whole, transitional justice had a weak effect on the longevity of post-conflict peace, though in the context of authoritarian regimes, trials did exhibit the potential to achieve longer periods of peace. Nonetheless, a major weakness associated with the study was that its definition of conflict was rather too restrictive, in that in their coding for 'a civil war', the conflict had to involve at least 25 battle-related deaths and in which government had to be an actor. To the likes of Mani (2005) and Skaar (2011; 2012) for instance, this seminal work fell-short of the mark by restricting their definition of intra-state conflicts that only included governments, hence undermining its generalizability.

Nonetheless, another groundbreaking study of the large-*n* quantitative kind within the transitional justice research program that is seen to have overcome the shortcomings of earlier works (such as Lie, Binningsbo and Gates, 2007) was undertaken by Reiter et al (2010; 2012). These scholars were the first in the field to build a transitional justice database (TJDB) suitable for large-*n* quantitative studies on the subject (Binningsbo et al, 2012:732). Using the UCDP/PRIO Armed Conflict Dataset definition of civil wars (which included both minor and major civil wars; that is 25-999 battle-related deaths in the case of the former, and at least 1000 battle-related deaths in the case of the latter) they coded 151 cases of internal armed conflict in a total of 91 countries. Further, using the Transitional Justice Database (TJDB), an original cross-national database consisting of all countries in the world for the period between 1970 and 2007; they went ahead to test several theoretical arguments associated with the degree to which the duration, ferocity, management and termination of civil wars

determine the kind of transitional justice mechanisms employed during the conflict and in the immediate post-civil war period. They came to the general conclusion that amnesties were more prevalent than trials both during and after conflict; and that following the end of civil wars, the ferocity and duration of the conflict would mostly determine which transitional justice mechanism is best suited. More importantly, they concluded that no particular transitional justice mechanism jeopardizes the peace process, and made a case to the effect that amnesties may be the most effective transitional justice mechanism in ending intra-state conflict (Reiter et al, 2012, 164-65).

## Conclusion

This paper set-out to examine the current state of theorization in the context of transitional justice and post-civil war peace building. The discussion laid emphasis on the more current and empirical domain of understanding how civil wars end, how the transitions from civil war to peace are addressed, and how the peace attained thereof can be fully sustained. Yet the analysis of theories of transitional justice and peacebuilding are intricately interrelated. One cannot truly understand the sustainability of peace without understanding the dynamics of conflict, both of the intra-state and inter-state kind.

Again, the levels and units of analysis across space and time also help to better understand and internalize the theoretical aspects under consideration. That said, theories are best tested; and some theories do register more heuristic value compared to others. Yet that is not to say that some theories count more than others- both normative and empirical approaches to questions of transitional justice and peacebuilding do have a contribution to make to this discourse; for in the final analysis, no single general approach and/or theory has provided all the answers the complex questions do with post-civil war peace and its sustainability.

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Traditional peacekeeping operations involved authorized military operations undertaken with the consent of the major parties to a dispute that were designed to monitor and facilitate implementation of peace agreements e.g. a ceasefire, truce etc. Peacekeeping was also aimed at supporting diplomatic efforts to reach long-term political settlements. Second generation peacekeeping operations are more complex and multidimensional where in addition to traditional military functions, police and civilian components are an integral part of the operation. The three components are tasked with different assignments that contributes towards sustainable settlement of the factors giving rise to conflict including the facilitation of the: protection of civilian populations; observance of Human Rights; security and management of refugee issues; disarmament, demobilization, and reintegration (DDR) programs; security sector reforms; election monitoring; conflict resolution efforts; restoration and practice of the Rule of Law among others. Second generation peacekeeping operations are also often referred to as Peace Support Operations (PSOs). (See Haidi Willmot and Scott Sheeran. 2014. 'the protection of Civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices'. *International Review of the Red Cross* (2013). 95 (891/892), 517-538. Multinational Operations and the law. Dol:10.1017/S1816383114000095)

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The African peacekeeping missions with direct mandate for PoC include: MONUC (Democratic Republic of the Congo) protection of civilians language was added to the mandate in SC Res. 1291, 24 February 2000, operative para. 8; UNMIL (Liberia): SC Res. 1509, 19 September 2003, operative para. 3(j); UNOCI (Côte d'Ivoire): SC Res. 1528, 27 February 2004, operative para. 6(i); MINUSTAH (Haiti): SC Res. 1542, 30 April 2004, operative para. 7(I)(f); ONUB (Burundi): SC Res. 1545, 21 May 2004, operative para. 5; UNMIS (Sudan): SC Res. 1590, 24 March 2005, operative para. 16(i); UNIFIL (Lebanon) protection of civilians language was added to the mandate in SC Res. 1701, 11 August 2006, operative para. 12; UNAMID (Darfur) protection of civilians language was in the original mandate, SC Res. 1769, 31 July 2007, operative para. 15(a)(2); MINURCAT (Chad and Central African Republic) protection of civilians language was added to the mandate in SC Res. 1861, 14 January 2009, operative para. 7(a)(i); MONUSCO (Democratic Republic of the Congo) protection of civilians language was in the

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African Union, *Peace Support Operations Harmonized Doctrine* (2006)

The Concept of R2P emerged in 2005 from recommendations by the UN International Commission on Intervention and State Sovereignty (ICISS) in view of the setbacks with the full realization of the PoC concept in violent conflicts experienced in the 1990s e.g. in Liberia, Somalia, Rwanda, Sierra Leone, Burundi, the DRC, Sudan among others. The R2P Concept applies in situations atrocious crimes e.g. genocide, crimes against humanity, war crimes, ethnic cleansing are systematic and planned as part of the war strategy. The R2P is conceived under three pillars: (1) The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk; (2) The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; and, (3) The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert (See Hanns Seidel Foundation (HSF), Konrad-Adenauer-Stiftung (KAS), Institute for Security Studies (ISS) and South African Institute of International Affairs (SAIIA). 2012. *The Responsibility to Protect – From Evasive to Reluctant Action?: The Role of Global Middle Powers*.

Retrieved February 20, 2015 from <http://www.issafrica.org/uploads/Book2012R2P.pdf>

Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, S/1999/1257, 16 December 1999, paras. 50-52

Current peace operations seek to address the root cause of conflict through peacebuilding activities, including electoral assistance, promotion of human rights, disarmament, demobilization and reintegration of combatants, security sector reform, rule of law among others.

African Union. 2010. *Draft Guidelines on PoC*. *Op Cit*.

Ibid.

African Union. 2011. Press Statement of the 279<sup>th</sup> Meeting of the Peace and Security Council. PSC/PR/BR.CCLXXIX). 18 May.

See Willmot and Sheeran. 2014. *Op Cit*. and African Union. 2010. *Draft Guidelines on PoC*. *Op Cit*.

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Broadly defined, Small Arms those weapons designed for personal use, and light weapons are those designed for use by several persons serving as a crew (See 1997 'Report of the Panel of Governmental Experts on Small Arms'. *General and Complete Disarmament: The UN Secretary-General Note: A/52/298 (III)*, p. 11. New York: United Nations General Assembly. 27 August 1997. <http://www.un.org/Depts/ddar/Firstcom/SGreport52/a52298.html>).

Muhereza, E. F., Francis Wairagu and John M. Kimani. (2011). Disarmament Experiences in RECSA Region with Particular Reference to Ethiopia, Sudan, Kenya and Uganda: a Regional Synthesis, Regional Centre on Small Arms (RECSA) Nairobi, RECSA.

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Binding protocols and conventions on SALW on the continent include: the SADC Protocol on The Control of Firearms, Ammunition and Other Related Materials, 2001; the Nairobi Protocol on the Control, Prevention and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States, 2004; the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunitions and Other Related Materials, 2006; and the Central Africa Convention for the Control of SALW, their Ammunition and Parts and Components that can be used for their Manufacture, Repair or Assembly, 2010 (African Union. Action Plan for The Implementation of the African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Retrieved July 25, 2014 from [Http://Www.Peaceau.Org/Uploads/Action-Plan-En.Pdf](http://Www.Peaceau.Org/Uploads/Action-Plan-En.Pdf)

Solemn Declaration on A Common African Defence and Security Policy. Retrieved July 25, 2014 From <http://www.peaceau.org/uploads/declaration-cadsp-en.pdf>

The PCRDP policy was adopted in Banjul, The Gambia, in July 2006 vide the Executive Council Decision (EX.CL/Dec.302 (ix) 25 June-2 July 2006 and provides for the development of AU operational guidance on DDR

See Para 58, p.17 APSA Roadmap 2011 quoted in African Union Disarmament, Demobilization and Reintegration Capacity Program (AU DDRCP). Project Document and Funding Proposal, October 2012 p. 14. Retrieved July 24, 2014 from <http://www.peaceau.org/uploads/auddrcp-final-project-document.october-2012.signature.pdf>

See African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Retrieved July 30, 2014 from [www.peaceau.org/uploads/au-strategy-en.pdf](http://www.peaceau.org/uploads/au-strategy-en.pdf)

See African Union. Retrieved July 30, 2014 from [www.peaceau.org/uploads/action-plan-en.pdf](http://www.peaceau.org/uploads/action-plan-en.pdf)

Inter-Agency Standing Committee (IASC, 1999) (The definition was adopted by the ICRC and the IASC in 1999 following several workshops hosted by the ICRC and attended by representatives of both the human rights and humanitarian communities).

See: Darfur Peace Agreement – Final Security Arrangements. Retrived February 18, 2015 from <http://unamid.unmissions.org/Default.aspx?tabid=11740&language=en-US>

See: DOHA DOCUMENT FOR PEACE IN DARFUR (DDPD). Retrived February 18, 2015 from <http://unamid.unmissions.org/Portals/UNAMID/DDPD%20English.pdf>

The concept of Practical Disarmament can be traced to as far back as 1995, through the UN's "Supplement to an Agenda for Peace" that, for the first time, recognized and acknowledged the phenomenon of armed non-state actors; and, called for practical disarmament measures, different from the regulations and sanctions applicable to nation-states. The call by the UN was for comprehensive measures that would address the issue of illicit SALWs in post-conflict situations and in doing so, would create the necessary conditions for sustainable peace and development (see United Nations. (January 3, 1995). Supplement to an Agenda for Peace: Position paper of the Secretary General on the occasion of the 50<sup>th</sup> Anniversary of the UN. A/50/60/S/1995/1, par. 60).

RECSA. (2011). Best Practice Guidelines on Practical Disarmament for the Great Lakes Region, the Horn of Africa and Bordering States. Nairobi: RECSA.

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Organisation for Security and Cooperation in Europe (OSCE). (2003, Chapter 8). Best Practice Guide on Small Arms and Light Weapons (SALWs) in DDR Processes. Handbook of Best Practices on Small Arms and Light Weapons. Vienna: OSCE Secretariat.

See RECSA. (2011). Best Practice Guidelines on Practical Disarmament for the Great Lakes Region, the Horn of Africa and Bordering States. Nairobi: RECSA.

The UN defines combatants as persons who are members of a national army or an irregular military organization; or who are actively participating in military activities and hostilities; or who are involved in recruiting or training military personnel; or who holds a command or decision-making position within a national army or an armed organization; or who arrived in a host country carrying arms or in military uniform or as part of a military structure; or who having arrived in a host country as an ordinary civilian, thereafter assumes, or shows determination to assume, any of the above attributes. Ex-combatants are defined as persons who have assumed any of the responsibilities or carried out any of the activities

mentioned in the definition of 'combatants', and have laid down or surrendered his/her arms with a view to entering a DDR process (See (See Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards, United Nations, 2010: 24, available at: <http://unddr.org/iddrs.aspx> and United Nations Disarmament, Demobilisation and Reintegration Resource Centre available at: <http://www.unddr.org/whatisddr.php>)

The UN Secretary General defines the rule of law to refer to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (See United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies*, report of the Secretary General, UN doc. S/2004/616 (23 August 2004), para 6).

Security Sector Reform (SSR) refers to a dynamic concept involving the design and implementation of a strategy for the management of security functions in a democratically accountable, efficient and effective manner to initiate and support reform of the national security infra- structure. The national security infrastructure includes appropriate national ministries, civil authorities, judicial systems, the armed forces, paramilitary forces, police, intelligence services, private-military companies (PMCs), correctional services and civil society (See United Nations, *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, 1 August 2006. [www.unddr.org](http://www.unddr.org)).

In 2007, a UN Secretary-General's Policy Committee agreed on a conceptual basis for peacebuilding to inform UN practice: "Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development". Peacebuilding strategies must be coherent and tailored to specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives" (See UN Peacebuilding: an Orientation. September 2010. [http://www.un.org/en/peacebuilding/pbso/pdf/peacebuilding\\_orientation.pdf](http://www.un.org/en/peacebuilding/pbso/pdf/peacebuilding_orientation.pdf))

See the example of the Security Council Resolution 1894 (2009) that expressed itself on the need for peacekeeping missions to develop indicators not only to measure the progress with the implementation of mandates but also on their protection strategies.

# The Application of Social Conflict Theory in Kenya's Conflict and Peace Trends

*Samuel A. Nyanchoga*

## Abstract

Conflict theories are diverse in perspective but this article focuses on a micro analysis of social conflict theory by Karl Marx (1818-1883) based on two fundamental namely dialectical materialism and class struggle (Marx & Engels, 1848:35). Marx's analysis of conflicts is hinged on economic factors. Sociologist and political theorist Ludwig Gumplowicz (1838–1909) and Lester F Ward (1841–1913) introduce an anthropological perspective to conflict and argues that states are organized around the domination of one group by another leading to class, race and ethnic conflict. Wright Mills' view is that unequal distribution of power and resources in the society contribute to conflicts. Alan Sears (2008) perceive that inequality in society produces conflict that can only be overcome through a fundamental transformation of the existing relations in the society. The social conflict theory is applied in this study to understand the nature of conflict in Kenya that range from labour conflict; materially based conflict; power related conflict to ethno-based conflict. The context within which ideas and material conditions contribute to conflict is analyzed. The social conflict theory is applied in this study to interrogate whether Kenya's conflict trend takes a class dimension or an ethno dimension. The social conflict theory postulates that peace is attained through structural and institutional reform in politics, law and economics. It will be critical to understand how the revolutionary class approach will contribute a peaceful society in the Kenyan context.

Conflict in Kenya is contextualized on the material, political and social dynamics of society. The social conflict theory explicates the intersectionality between power, resource and conflict. The glaring inequality in society contribute to conflict that can only be overcome through structural transformation of the existing power and economic relations.

This study therefore applies the social conflict theory in Kenya's conflict and peace trends. The outcome of this study is that the causes of conflict and peace trends in Kenya cannot be fully explained in terms of the tenets of the social conflict theory.

## Conflict and Types of Conflict

Conflict may be defined in simplistic terms as a situation in which entities are in serious disagreement with each other. Conflict may also refer to a situation in which there is or

are opposing ideas or opinions. This may be ideological conflict. For example, the capitalist ideas are the antithesis of communist ideas. Conflict may be defined as a violent situation between two countries that may take the form of armed conflict leading to disruption of peace.

The criminal assault on the state sovereignty or raw power struggle between elites may be classified as conflict. Hostile masses, belligerent leaders and inter-ethnic security dilemmas can lead to conflict. There is also class analysis to conflict where the borne of contention is resource allocation. From the above discussion one may classify conflict as follows:

### *Inter- personal conflict:*

Inter personal conflict occurs at inter- personal level. It arises when the ideals and aims of two individuals clash with each other. Varied personalities usually results to incompatible

choices and opinions that may degenerate into conflict.

### ***Inter-racial conflict:***

Inter-racial conflict is mostly due to the physical differences. Some races consider themselves superior to other races and there are also races which feel that they are inferior to others. The feeling of superiority or inferiority is the root cause of racial conflict. The conflict between the white and black population in the U.S.A. provides an example of inter-racial conflict.

### ***Inter-ethnic and intra-ethnic conflict***

Inter-ethnic conflict may occur due to primordial, instrumental and constructivist reasons. Intra-ethnic conflict may occur due to the polarization of ethnic group at clan, lineage level or due to competitive situations such as over leadership, succession, or resources.

### ***Political conflict:***

Political conflict arises when different political parties with their own ideologies try to achieve their interest. The main cause of this kind of conflict is power which they want to capture. The conflict between different political parties is an example of this type of conflict.

### ***International Conflict:***

International conflict occurs among the different nations of the world. It may take place for political, religious, economic or ideological reasons.

### ***Class Conflict:***

Class conflict takes place among classes with their differing interests. In the feudal society there was conflict between the landlords and the serfs. The capitalist society is characterized by the bourgeoisie and proletariat conflict.

*Intra group conflict* is a type of conflict that happens among individuals within a team. The incompatibilities and misunderstandings among these individuals lead to an intra group conflict. It arises from interpersonal disagreements

or differences in views, ideas, rivalry over resources and boundaries that establishes group identity as a team.

## **The Social Conflict Theory**

Karl Marx theory of social conflict states that conflict is as a result of two factors; material conditions and the social relations of social classes in society. According to Karl Marx, material conditions and conflict over the material conditions is what causes conflict in society.

Karl Marx in *The Das Capital* (1848) opens with a challenging statement; "The history of all hitherto existing societies is the history of class struggle". For Karl Marx the communal mode of production did not produce social classes. However, the feudal mode of production produced two social classes; feudal lords and serfs. The slave mode of production produced the master and the slave. The capitalist mode of production produced the bourgeoisie and proletariat. These social classes were in conflict with each other because of the prevailing social relations that were exploitative. The transitional ties of capitalism link bourgeoisie at the centre with national bourgeoisie at the periphery who perpetuate policies that promote social and economic inequality and disadvantage the workers and peasantry. According to Karl Marx conflict is impeded in the material conditions of society and historical process follows universal or general laws thus ignoring the specificity of historical events. In the context of Karl Marx's scheme of things; peace and order is only achieved when society attains the exploitation free and classless socialist order through the proletariats' revolutionary struggles. Karl Marx's views that social order and consensus is attributable to those people who unite around common interest.

Gumplowicz sees conflict as process through which members of society struggle for existence and self development. According to Gumplowicz the origin of human institutions such as the state is in conflict where human groups begin to subjugate each other leading to



conflict and development at the same time. He also argues that the history of every nation is one of class conflict in which the strong and the fit survive and dominate the less strong and fit. As each group strives to become the controlling group within the state there are conflicts because the motivation is self-interest. Groups tend to increase their power, territory or resource and eventually leading to ethno or racial conflict. Gumpowicz sees the development of history as unilinear but in actual sense it develops in cyclical phases. Wright Mills; a founder of modern conflict theory argues that conflict are caused by unequal distribution of power and resources in the society.

### **The Importation of Social Conflict Theory into Kenya Conflict Scenario**

The difficulty of importing Karl Marx's analysis of conflict to the Kenya context is due to the fragility of Kenya's industrial base; absence of concretized bourgeoisie and proletariat class consciousness to steer the revolution. Karl Marx's explanation of historical events in universal and general terms ignores historical specificities or local context. Nevertheless in the context of the Kenyan situation inequality between social groups and unequal distribution of material resources and power triggers conflict. Gumpowicz interprets the cause of conflict due to dominance of one group over another while Wright situates conflict in an unequal distribution of resources.

#### ***Class and Class Consciousness***

Due to the fragility of industrial base it is unlikely that Kenya has concretized classes such as bourgeoisie and proletariats as envisaged by Karl Marx. Nevertheless international capitalist system has contributed to the creation of a comprador class or national bourgeoisie and quasi proletariats. The existence of national bourgeoisie, multinational corporations are seen as the key players that maintain and perpetuate exploitation. In the words of Colin Leys the national bourgeoisie in Kenya is product of

metropolitan capital. This argument is credible even though disputed by Swainson (2010) who sees the national bourgeoisie as a product of local capital accumulation aided by the corrupt state (Leys,1975 Swainson,2010). Leys argues that the existence of the national bourgeoisie dates back to 1930s and at independence it blossomed because of its access to state power to accumulate resources including land. Some of emerging national bourgeoisie went into distribution and wholesale sector as foreign bourgeoisie such as Brooke bond, Finlay and British American Tobacco entrenched themselves in agricultural and manufacturing sector (Swainson, 2010). The huge presence of multinational corporations in Kenya such as Google, Visa, MasterCard, KFC, Pepsi, Travelport, Dow Chemicals, Bank of China, Bharti Aitel, Blackberry Ltd, Bosch, Cisco Systems, China Central Television, Citibank, Coca Cola, Dago, Eltek, First Solutions, General Electric, Heinken, Hill International, Huawei, IBM, ICAO, Intel Corporation, Kerpersky Ltd, Motorola Solutions, Nokia, Pfizer, Sage Group, Sony, Toyota, Visa Inc, Standard and Chartered Bank demonstrates evidence of intense transnational capitalist activities supported by national comprador class( Kenya ranked second in Africa as investment Hub for global business in [www.businessdailyafrica.com](http://www.businessdailyafrica.com) accessed 16/3/2015). In the words of Dependency theorists; Raul Presbich (1980) and Andre Gunder Frank (1967) the huge presence of Multinational Corporation works in cahoots with national bourgeoisie class or the comprador class to perpetuate and entrench policies of exploitation of the human and non human resources. Consequently social and economic inequality and the gap between the rich and poor is widening hence exacerbating tension and conflicts.

While the working class as a category exist because of its position in chain of production but class consciousness among Kenyan workers as a totality of interests that define a particular category is debatable. In the Kenyan context the working class has exhibited strike actions as a way of struggling to end their exploitation



both in the public and private sector. They have constantly used workers unions as platforms to aggregate and articulate their interests. The basic dilemma of the struggling workers is lack of leadership, class consciousness and repressive Leviathan State. It is for these reason that working class struggle is no longer liberating and emancipatory.

### ***Economic Inequality***

Karl Marx attributes inequality, resentment and violence to economic discrimination and unequal access to resources. Unequal access to resources, such as land, capital and vast differences in standard of living; growing inequalities and gaps, between the rich and poor, can aggravate intra-state tensions. Research has shown that in Kenya, 10% of the population control 42% of the country's income, 80% of the population control 48% of income; while the bottom 10% of the population control less than 1% (Daily Nation, 23, May 2006:1). The national poverty levels in Kenya since 1992 are as follows 1992 44.8 %; 1994 40.3%; 1997 52.3 % and 2005; 45.9; 2009, 45 % and 2015 51 % (Second report on Poverty in Kenya Vol. 1; Kenya National Bureau of Statistics: Basic report on Well-being in Kenya, 2007; 2015).

Inequality in the distribution of national resources, poverty and poor governance exacerbates conflict. According to a report by Development Policy Management Forum (2015) 90 percent of Kenya workforce earns less ksh. 15000; 9% earn between ksh.1500 to ksh.100000 while 1% earn more than ksh.100000. The huge inequality in wages is reflected in the ostentatious life style of ruling elite and those of everybody else. Given this scenario inequality and poverty contributes to crime and insecurity. Political violence is rooted in the favoritisms of state practice based on ethnic alliances and political patronage (Nyanchoga, 2014; Brown, Cote Sean & Miller; 1997).

### ***Non violent means***

Karl Marx focuses on the conflicts as the catalyst that brings about change in society.

The theory ignores non violent or non forceful means of resolving conflict. Contemporary society tends to focus on non forceful means such as diplomacy, arbitration and mediation in resolving conflict with remarkable success.

### ***Non economic causes of conflict***

Karl Marx also focuses on economic factors while numerous factors such as ethnicity, gender, race and political inequality contribute to conflict. The Marxist analysis of conflict fails to capture negative ethnicity as one of the triggers of conflict hence human historical processes including conflict cannot be interpreted in general and universal laws without considering specific local conditions (Nyanchoga,2014; Brown, Cote Sean & Miller 1997:102).

### ***Ethno-based conflict***

Gumprowicz interprets the cause of conflict due to dominance of one group over another. In the context of the Kenyan society ethnicity is a concrete reality that defines identity and access to resources (Nyanchoga,2014) . Ethnic clashes in Rift Valley of Kenya in 1992,2007 and 2008 were interpreted in terms of political competition for power and resources. For instance the Kalenjin community perceived Agikũyũ of harbouring imperialistic and proprietary tendencies as they settled in the traditional homeland of the Kalenjin and Maasai; in Laikipia, Nyahururu, Njoro, Molo, and Likia, after the withdrawal of the colonial rule. The Kenyatta regime allegedly aided Agikuyu community through land buying companies to appropriate these vast lands (Nyanchoga,2014; Brown, Cote Sean & Miller 1997:102).

The Kenya's North eastern region has been the epi-centre of conflict due to resource competition. Gumprowicz and Lester's analysis of the causes of conflict on the basis of ethnicity and resource competition provides a rational explanation of the nature of conflict in the northern Kenya. The region has large ethnic Somali population who for a

long time exhibited secessionist tendencies due to marginalization by the state as other communities were in conflict with each other due limited resources. Pastoralist communities in the region use guns to secure the grazing land, water resources and stealing livestock from their neighbours as warlords use the weapons to conduct large scale raids for commercial purposes (Daily Nation, June 24, 2006). Similarly the secessionist activities of the Mombasa Republican Council are explained in terms of marginalization of the coastal communities by successive governments in Kenya leading to a dispossessed lot (Nyanchoga, 2014). But Gumpowicz argument that conflict has the capacity to propel society to higher levels of development evokes mixed reactions. Contextualizing this assertion in Kenya conflict scenario of 2007 and 2008 brought economic set back as economic growth slowed down but on the other hand the constitutional development of 2010 and subsequent political development was a necessary outcome. Linking this to development discourse one may argue that the process does not imply simultaneous benefit or progress for all. The cardinal issue is that Kenya's conflict situation is driven by class and ethnic politics. This is because there is a lot of intersectionality between ethnicity and class politics and political elites concretize around ethnicity in their search for power.

## **The Applicability of Social Conflict Theory to Peace Trends in Kenya**

According to Karl Marx peace is achieved through the revolutionary struggles of the proletariats. The applicability of this thesis in the Kenyan situation is debatable given the fragility of working class and massive operations of multinational national corporations supported by corrupt political elite. Karl Marx situates the ultimate peace in the establishment of the socialist society by vanquishing the exploitative tendencies of bourgeoisie class through the

proletariat revolution. The very fact that the revolutionary proletariats did not achieve this in the so called socialist orientated countries makes the Marxist peace process delusionary and even more problematic to situate it in a country that has a fragile industrial base and with no class consciousness.

While Karl Marx identifies inequality as the catalyst for conflict; equality in the distribution of material wealth is a precursor for peaceful societies. Many of the societies such as Austria, Hungary, Norway, Sweden and Finland that strive to maintain equality are rarely in conflictual situations while some of the most unequal societies such as Central African Republic, Mozambique, Zambia, Haiti, Sierra Leone, and Republic of South Africa are embroiled in conflict (<http://www.businessinsider.com/most-unequal-countries-in-the-world-2011-10#at-least-the-us-is-creative-40>; accessed on 13/3/2015). In the context of Kenya; inequality in the distribution of resources such as land, job opportunities and political power portend serious conflict.

Gumpowicz and Lester's assertion that peace is a necessary outcome of conflict situation may bear credence in the Kenyan conflict situational analysis. Looking at Kenya conflict trends and in particular the 2007 and 2008 post election conflict scenario and thereafter the 2010 constitutional framework and the various institutional reforms in order to address the root causes of conflict. The devolved system of governance; the reduction of executive powers, reforms in the security sector and the judiciary may be viewed as an attempt towards the realization of structural and procedural peace. However the challenge is that the proponents of the status quo negate this process of attaining a peaceful society.

Consequently the social conflict theory is not in consonance with the current methods of achieving peace and peace building. The theory ignores non violent or non forceful means of resolving conflict which may involve

prosecution, negotiation, mediation, arbitration, diplomacy, and creative peace building. These methods are perceived to be non violent and contrary to the social conflict theory peace process as discussed below.

### Non Violent Approaches to Peace Trends in Kenya

The following approaches to peace do not fall with the social conflict theory analysis of peace. For instance the prosecution of criminals, ordinarily, aims at preventing criminals from perpetuating or repeating the crimes. Courts have been used to prosecute criminals and war lords, who have committed war crimes and crimes against humanity (Saturday Nation, September 14, 2007: 10; Nyanchoga, 2007).

The armed forces, like the police, GSU or the army, are used to impose curfew and instill discipline in localized conflicts. This has been witnessed in places like Mt. Elgon, Mathare slum, in Nairobi; Laikipia, Likia and Molo regions, of Kenya. The rationale is that conflict can be neutralized before they turn violent and widespread. The police are expected to provide appropriate intervention to reduce violence and criminality. However, armed forces have, more often than not, been accused of human rights abuse that range from rape, extorting money from their victims and taking sides when it comes to inter-ethnic conflicts. The Kenyan Police, for instance, have been accused of extra judicial killings of the adherents of the *Mungiki* Sect. Use of military against the MRC and Kenya's Military incursion into Somalia may resolve the conflict in the short run but there are long term implications (Nyanchoga, 2014).

In some cases, education is used as a tool for confidence building and to sensitize the people of the need to observe peace and co-existence. But lack of involvement of the local experts, religious leaders and elders, often derail the process. Where the medium of communication is a language that the local

people do not understand, this often jeopardizes the achievement of objectives. When the government takes charge of the process, people feel alienated and detach themselves from the process (Brown, Cote Sean & Miller; 1997).

Power sharing has been used as measures of confidence building. The power sharing arrangement between Emilio Mwai Kibaki and Raila Amolo Odinga in Kenya prevented the escalation of violent conflict over the 2007 disputed presidential elections (Thompson, 2012).

Amnesty is the offer of immunity from prosecution on condition that the belligerents cease unlawful activities. It transcends punishment and retribution, for the sake of the common good; particularly in situations like Rwanda and South Africa, where the civil war and nationalist struggles left bitter memories of human rights abuse and a divided people. Critics argue that amnesty has limitations, because those have been involved in killings, looting of public funds and massive corruption, may seek amnesty in order to evade prosecution. It may also be seen as unjust when the state initiates amnesty, to exempt the perpetrators from prosecution; without consultation, or by sacrificing the rights of the victims. This may be seen as overriding the rights of the victims. The victims may feel that the state has used amnesty to protect politically connected personalities (Thompson, 2012).

This is a tool that is used to prevent destructive competition through persuasion, dialogue, mutual trust, and genuine collaboration. Diplomacy is tied to the politics of secrecy, which may turn to be counter-productive; when it is used to hide the malpractices of corruption, arms trade and the looting of public funds. Diplomacy was successfully applied in Kenya's conflict situation in 2007/08 (Thompson, 2012).

Mediation builds on negotiations; and involves a third party intervention, in the conflict. It aims

at arriving at a settlement that is acceptable to those involved: one that they could not have achieved on their own. The mediators' role is to reduce tension and endless bargains, for the sake of peace. The choice of mediators is important for they must be acceptable to the parties involved. The objectives to be achieved, and procedures to be followed must be communicated to the parties concerned in advance; in order to facilitate a proper involvement. Koffi Anan proved successful as a mediator Kenya's post election violence in 2007/28 (Thompson, 2012).

The traditional peace building strategies are embedded in community cultural practices. They involve early warning system; collection of sensitive intelligence information concerning security and external threats. Other methods include the use of military as a last resort; the principle of common humanity that encourage sharing hence reducing warfare and conflict. The principle of reciprocity emphasized the ethics of sharing and a sense of collective security. The most important in conflict resolution were the councils of elders. These were often composed of men, many of them aged and experienced in the art of governance. These methods of conflict resolution are culture specific and have proved effective in pastoral conflict areas in northern Kenya. From the foregoing discussion the social conflict theory falls short interrogating contemporary peace trends in Kenya.

## Conclusion

The article has demonstrated that conflict exist in Kenya today in several variants. The intensity of conflicts in many parts of Kenya is because of fragility of states, skewed resource distribution, weak nationhood structures and role of the international capitalist system that spread the exploitative ideology. The application of the social conflict theory to Kenya's conflict and peace trends focus on general laws thus ignoring the traditional or homegrown methods that have also proven effective.

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Traditional peacekeeping operations involved authorized military operations undertaken with the consent of the major parties to a dispute that were designed to monitor and facilitate implementation of peace agreements e.g. a ceasefire, truce etc. Peacekeeping was also aimed at supporting diplomatic efforts to reach long-term political settlements. Second generation peacekeeping operations are more complex and multidimensional where in addition to traditional military functions, police and civilian components are an integral part of the operation. The three components are tasked with different assignments that contributes towards sustainable settlement of the factors giving rise to conflict including the facilitation of the: protection of civilian populations; observance of Human Rights; security and management of refugee issues; disarmament, demobilization, and reintegration (DDR) programs; security sector reforms; election monitoring; conflict resolution efforts; restoration and practice of the Rule of Law among others. Second generation peacekeeping operations are also often referred to as Peace Support Operations (PSOs). (See Haidi Willmot and Scott Sheeran. 2014. 'the protection of Civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices'. *International Review of the Red Cross* (2013). 95 (891/892), 517-538. Multinational Operations and the law. DoI:10.1017/S1816383114000095)

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SCR 1270 (22 October 1999). para. 14 (ECOMOG stands for the Economic Community of West African States Monitoring Group).

The African peacekeeping missions with direct mandate for PoC include: MONUC (Democratic Republic of the Congo) protection of civilians language was added to the mandate in SC Res. 1291, 24 February 2000, operative para. 8; UNMIL (Liberia): SC Res. 1509, 19 September 2003, operative para. 3(j); UNOCI (Côte d'Ivoire): SC Res. 1528, 27 February 2004, operative para. 6(i); MINUSTAH (Haiti): SC Res. 1542, 30 April 2004, operative para. 7(I)(f); ONUB (Burundi): SC Res. 1545, 21 May 2004, operative para. 5; UNMIS (Sudan): SC Res. 1590, 24 March 2005, operative para. 16(i); UNIFIL (Lebanon) protection of civilians language was added to the mandate in SC Res. 1701, 11 August 2006, operative para. 12; UNAMID (Darfur) protection of civilians language was in the original mandate, SC Res. 1769, 31 July 2007, operative para. 15(a)(2); MINURCAT (Chad and Central African Republic) protection of civilians language was added to the mandate in SC Res. 1861, 14 January 2009, operative para. 7(a)(i); MONUSCO (Democratic Republic of



the Congo) protection of civilians language was in the original mandate, SC Res. 1925, 28 May 2010, operative paras. 11 and 12(a); UNISFA (Abyei), SC Res. 1990, 27 June 2011, operative para. 3(d); UNMISS (South Sudan): SC Res. 1996, 8 July 2011, operative para. 3(b); MINUSMA (Mali): SC Res. 2100, 25 April 2013, operative para. 16(c)(i). (See Willmot and Sheeran. 2014. *Op Cit*).

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Major General OB Akwa. *The Diminishing Influence of the Nation-State: The African challenge and policy responses*. *African Defense/September 2014*. P. 7

African Union, *Peace Support Operations Harmonized Doctrine* (2006)

The Concept of R2P emerged in 2005 from recommendations by the UN International Commission on Intervention and State Sovereignty (ICISS) in view of the setbacks with the full realization of the PoC concept in violent conflicts experienced in the 1990s e.g. in Liberia, Somalia, Rwanda, Sierra Leone, Burundi, the DRC, Sudan among others. The R2P Concept applies in situations atrocious crimes e.g. genocide, crimes against humanity, war crimes, ethnic cleansing are systematic and planed as part of the war strategy. The R2P is conceived under three pillars: (1) The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk; (2) The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; and, (3) The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert (See Hanns Seidel Foundation (HSF), Konrad-

Adenauer-Stiftung (KAS), Institute for Security Studies (ISS) and South African Institute of International Affairs (SAIIA). 2012. *The Responsibility to Protect – From Evasive to Reluctant Action?: The Role of Global Middle Powers*. Retrieved February 20, 2015, from <http://www.issafrica.org/uploads/Book2012R2P.pdf>

Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, S/1999/1257, 16 December 1999, paras. 50-52

Current peace operations seek to address the root cause of conflict through peacebuilding activities, including electoral assistance, promotion of human rights, disarmament, demobilization and reintegration of combatants, security sector reform, rule of law among others.

African Union. 2010. *Draft Guidelines on PoC*. *Op Cit*.

*Ibid*.

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See Willmot and Sheeran. 2014. *Op Cit*. and African Union. 2010. *Draft Guidelines on PoC*. *Op Cit*.

Draft DPKO/DFS Operational Concept on PoC. *Op Cit*.

Broadly defined, Small Arms those weapons designed for personal use, and light weapons are those designed for use by several persons serving as a crew (See 1997 'Report of the Panel of Governmental Experts on Small Arms'. *General and Complete Disarmament: The UN Secretary-General Note: A/52/298 (III)*, p. 11. New York: United Nations General Assembly. 27 August 1997. <http://www.un.org/Depts/ddar/Firstcom/SGreport52/a52298.html>).

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Fusato, Massimo. (2003). "Disarmament, Demobilization, and Reintegration of Ex-Combatants." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Retrieved August 13, 2014 from <http://www.beyondintractability.org/essay/demobilization>

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United Nations. **Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects**, UN Document A/CONF.192/15. Retrieved July 30, 2014 from <http://www.poa-iss.org/PoA/poahtml.aspx>

Binding protocols and conventions on SALW on the continent include: the SADC Protocol on The Control of Firearms, Ammunition and Other Related Materials, 2001; the Nairobi Protocol on the Control, Prevention and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States, 2004; the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunitions and Other Related Materials, 2006; and the Central Africa Convention for the Control of SALW, their Ammunition and Parts and Components that can be used for their Manufacture, Repair or Assembly, 2010 (African Union. Action Plan for The Implementation of the African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Retrieved July 25, 2014 from <http://www.peaceau.org/uploads/Action-Plan-En.Pdf>

African Union, Solemn Declaration on A Common African Defence and Security Policy. Retrieved July 25, 2014 From <http://www.peaceau.org/uploads/declaration-cadsp-en.pdf>

The PCRD policy was adopted in Banjul, The Gambia, in July 2006 vide the Executive Council Decision (EX. CL/Dec.302 (ix) 25 June-2 July 2006 and provides for the development of AU operational guidance on DDR

Para 58, p.17 APSA Roadmap 2011 quoted in African Union Disarmament, Demobilization and Reintegration Capacity Program (AU DDRCP). Project Document and Funding Proposal, October 2012 p. 14. Retrieved July 24, 2014 from <http://www.peaceau.org/uploads/>

[auddrcp-final-project-document.october-2012.signature.pdf](#)

African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Retrieved July 30, 2014 from [www.peaceau.org/uploads/au-strategy-en.pdf](http://www.peaceau.org/uploads/au-strategy-en.pdf)

African Union. Retrieved July 30, 2014 from [www.peaceau.org/uploads/action-plan-en.pdf](http://www.peaceau.org/uploads/action-plan-en.pdf)

Inter-Agency Standing Committee (IASC, 1999) (The definition was adopted by the ICRC and the IASC in 1999 following several workshops hosted by the ICRC and attended by representatives of both the human rights and humanitarian communities).

UNAMID. Darfur Peace Agreement – Final Security Arrangements. Retrieved February 18, 2015 from <http://unamid.unmissions.org/Default.aspx?tabid=11740&language=en-US>

UNAMID. DOHA DOCUMENT FOR PEACE IN DARFUR (DDPD). Retrieved February 18, 2015 from <http://unamid.unmissions.org/Portals/UNAMID/DDPD%20English.pdf>

The concept of Practical Disarmament can be traced to as far back as 1995, through the UN's "Supplement to an Agenda for Peace" that, for the first time, recognized and acknowledged the phenomenon of armed non-state actors; and, called for practical disarmament measures, different from the regulations and sanctions applicable to nation-states. The call by the UN was for comprehensive measures that would address the issue of illicit SALWs in post-conflict situations and in doing so, would create the necessary conditions for sustainable peace and development (see United Nations. (January 3, 1995). Supplement to an Agenda for Peace: Position paper of the Secretary General on the occasion of the 50<sup>th</sup> Anniversary of the UN. A/50/60/S/1995/1, par. 60).

RECSA. (2011). Best Practice Guidelines on Practical Disarmament for the Great Lakes Region, the Horn of Africa and Bordering States. Nairobi: RECSA.

Muhereza, Frank Emmanuel. (2011). An Analysis of Disarmament Experiences in Uganda. Regional Centre on Small Arms (RECSA) Nairobi, RECSA.

Organisation for Security and Cooperation in Europe (OSCE). (2003, Chapter 8). Best Practice Guide on Small Arms and Light Weapons (SALWs) in DDR Processes. Handbook of Best Practices on Small Arms and Light Weapons. Vienna: OSCE Secretariat.

RECSA. (2011). Best Practice Guidelines on Practical Disarmament for the Great Lakes Region, the Horn of Africa and Bordering States. Nairobi: RECSA.

The UN defines combatants as persons who are members of a national army or an irregular military organization; or who are actively participating in military activities and hostilities; or who are involved in recruiting or training military personnel; or who holds a command or decision-making position within a national army or an armed organization; or who arrived in a host country carrying arms or in military uniform or as part of a military structure; or who having arrived in a host country as an ordinary civilian, thereafter assumes, or shows determination to assume, any of the above attributes. Ex-combatants are defined as persons who have assumed any of the responsibilities or carried out any of the activities mentioned in the definition of 'combatants', and have laid down or surrendered his/her arms with a view to entering a DDR process (See Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards, United Nations, 2010: 24, available at: <http://unddr.org/iddrs.aspx> and United Nations Disarmament, Demobilisation and Reintegration Resource Centre available at: <http://www.unddr.org/whatisddr.php>)

The UN Secretary General defines the rule of law to refer to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (See United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies*, report of

the Secretary General, UN doc. S/2004/616 (23 August 2004), para 6).

Security Sector Reform (SSR) refers to a dynamic concept involving the design and implementation of a strategy for the management of security functions in a democratically accountable, efficient and effective manner to initiate and support reform of the national security infrastructure. The national security infrastructure includes appropriate national ministries, civil authorities, judicial systems, the armed forces, paramilitary forces, police, intelligence services, private-military companies (PMCs), correctional services and civil society (See United Nations, *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, 1 August 2006. [www.unddr.org](http://www.unddr.org)).

In 2007, a UN Secretary-General's Policy Committee agreed on a conceptual basis for peacebuilding to inform UN practice: "Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development". Peacebuilding strategies must be coherent and tailored to specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives" (See UN Peacebuilding: an Orientation. September 2010. Retrieved July 29, 2014, from [http://www.un.org/en/peacebuilding/pbso/pdf/peacebuilding\\_orientation.pdf](http://www.un.org/en/peacebuilding/pbso/pdf/peacebuilding_orientation.pdf))

See the example of the Security Council Resolution 1894 (2009) that expressed itself on the need for peacekeeping missions to develop indicators not only to measure the progress with the implementation of mandates but also on their protection strategies.

# Community Based Partnership Approach to Peace and Security

*Eunice Njambi (Ph.D)*

## ABSTRACT

Community peace and security building takes individuals, communities, political commitments, institutional involvement and financial commitments to rebuild. There is a basic assumption that, all communities desire to find ways to create an environment where working together is more desirable, peaceful and secure. Therefore, with some direction and support, fractured societies can be assisted to reach this goal.

Community-based peace interventions often seek to transform community: relationships service delivery and good governance. Community security is a fundamental objective and its a precondition for other human development goals.

Non State Actors (NSAs) may initiate community based partnership by based on different partnership model. The effectiveness of partnership is base on comprehensive participatory process strategies with the community to taking the lead in resolving and developing to rebuild their peace and security and breaking the viscous circle of insecurity. When communities are committed to the partnership processes they move towards a sustainability of peace and security.

This paper examines types of community based partnerships, partnership models, the vicious circle of insecurity and need for community based partnership and lastly discuss community based partnership model and process that can be used to initiate community based peace and security partnership.

## Introduction

Communities in Africa are facing new challenges that threaten peace and security. These include peace and security systems local and international, policies that ultimately affect the communities in their contexts. Given such challenges, partnership strategies need to utilize a combination of measures which effectively address determinants of peace and security. Communities have unique contributions to the partnership process and need to participate fully in decision-making, planning and implementing initiatives that impact on their lives. (Stiftung and Politik 2015).

When communities are negatively labelled, they unconsciously have a negative attitude towards themselves and act as they are labelled. This hinders participation because communities

feel inferior and take a passive role that does not result in sustainable change. Partnership on an equal basis empowers communities, ensure all the stakeholders play equal but differing roles and recognise and use the variety of experiences from the different players.

Partnership mechanisms integrated and built at community, intermediary, and at national level are ensured on the principles of inclusive community approaches. Partnerships have contributed to building trust, confidence and understanding between the various sectors, have helped develop a shared vision, decentralised the decision making of state agencies and have developed effective links back to policy making procedures (Spence 2000).

The components of community partnership are determined by social, political and economic

circumstances at national and local levels, and by the expectations, needs and abilities prevailing in the locality. The partnership approach aims to understand how the continuum of community organizations and different social organizations are involved mobilizing and influence peace and security. This paper discusses a broad range of community based partnership approaches, community peace and security and the process of developing a community based partnership process.

This paper aims to analyse types of community based partnerships, examine community based models in peace and security, discuss the vicious circle of insecurity and need for community based partnership and finally describe the community based partnership process.

## **Community Based Peace**

Community based peace can be applied to individual, community or as a component of wider national programmes. It is focused primarily on achieving development outcomes, such as service delivery and good governance. Although such interventions have the potential to contribute to securing peace they do not necessarily result in peacebuilding. Rather, community based peacebuilding interventions often seek to transform relationships to collaborate with a wide range of actors beyond the development community, including diplomatic actors and conflicting parties and broader peace strategies, (Pottebaum and Lee 2007). The community based approaches for peacebuilding may include:

**Community-based policing** an approach that brings together the police, civil society and local communities to jointly take responsibility for and develop solutions to local safety and security. Community policing is a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime, (USAID 2007).

**Socio economic recovery:** Approaches adopted to provide service and covers a broad range of activities spanning reconstruction of physical infrastructure, livelihood and employment generation, rehabilitation of public health and educational systems, development of social safety nets, legal and regulatory reforms, private sector, creation of markets and transparent banking and financial institutions.

**Media, communication and civic education:** Community-based forms of media that seek to promote dialogue, debate on key issues in society, promote reconciliatory processes and civic education. This may include; radio stations, broadcast in multiple languages, community video, local videographers documenting social change, community concerns and lessons learnt.

**Traditional justice and reconciliation:** Approaches to justice and reconciliation often focus on the psycho-social and spiritual dimensions of violent conflicts. Traditional approaches are aim at reintegrating conflicting parties into the community. An important component is public cleansing ceremonies, undertaken is an integral step in healing community relationships. **Heritage and cultural preservation:** This are initiatives designed to preserve culture in disaster and conflict-affected contexts have included community forums in order to allow for the articulation of local needs, quick responses on the ground, and increased social capital. Communities are also involved in inventorying their culture, which has contributed to preservation and a sense of national identity, (Huma 2009).

## **Community Based Security**

Maintaining community security is a fundamental objective of a government, its a pre-condition for other human development goals. Security is multi-faceted, consisting of human, physical, economic and socio-political security, failure of which has results in structural violence, (Mkutu 2004). Different actors have

different perspectives on security, influenced by culture and circumstance. Some define security in military terms, others emphasize economic or livelihood security, or security that being part of a group provides.

With this realization the concept of human security emerged, re-balancing debates on security away from an exclusive focus on military security of the state, towards a security of the people whom the state serves.

The UNDP definition of human security have seven main aspects of which community security is one. Community security then refers to the security people derive from their membership in a group a family, community, an organization, ethnic group that can provide a cultural identity and a treasuring set of values, such groups also offer practical support, (UNDP 1994). Essentially, community security is a sense of security derived from a sense of trust of neighbours and participation in and belonging to a community. However, if we see communities as social networks not necessarily overlapping with geographic or ethnic units community security should be viewed more broadly than aiming to protect people from the loss of traditional relationships and values and from sectarian and ethnic violence. Community security in practice, also includes issues like the proliferation of small arms and light weapons (SALW), criminal violence by opportunists and vigilante groups, mistrust and lack of faith in the security forces to provide security to ordinary people, (Hollestelle & Simonse 2005).

Community security is seen as a response to the security threats of the community, however, it can also be seen as a state of affairs, (Saferworld 2008). Community security is both as an end state and the process in which communities develop responses to achieve this end state. Community security as an end state is the situation in which communities feel secure from threats exerted by violent conflict, arms proliferation, crime, and a lack of protection or direct threat by the state. Community security as a process means that communities participate

in identifying, prioritizing, development and implementation of appropriate responses for their security needs. Community based initiatives that enhance security include traditional peace committees, peace zones and community based policing.

## Community Based Partnership Concept and practice

### Partnership Concept

Partnership is a term that implicit connotations of sharing and trust. Partnership' suggests equality, respect, reciprocity, ownership and strengthening linkages, (Gutierrez, 2008). Yet, some partnerships can be abusive and unequal in practice. Partnership may mean different things to different people, sectors and institutions. Other associated words include association, cooperation, collaboration, participation, joint decision making and long-term relationship. At a conceptual level partnership is generally understood as a positive attribute with the following characteristics; long-term, shared responsibility, reciprocal obligation, equality, mutuality and balance of power (Fowler, 2000). Core principles of reciprocity, accountability, joint decision making, respect, trust, transparency, sustainability and mutual interests have been highlighted in the literature (Wanni, 2010; Dochas, 2010; Crawford, 2003).

### Types of Relationships in a Partnership

Community partnerships comprise of relationships between formal (static) authorities and (dynamic) communities and are in an ever changing process. The interactions can be divided into five categories. The interactions and energy flows are complex at all levels.

**Predation** describes relationships where one partner, the predator, feeding on and typically killing another partner which is the prey species. Predators use various methods to capture prey. Herbivores do not necessarily kill a plant they feed on but put pressure on the plant species.



**Competition** describes multiple relationships organisms fighting for the same resources. The competition may involve active interference or direct interference. The more similar two species are, the more competitive they are with each other, fighting for limited resources.

**Parasitism** is when one species benefits from a second species that is disadvantaged, but generally not killed. A tick feeding on a host is a good example of parasitism. The host is not directly killed by the tick, which benefits from the relationship the host is adversely affected.

**Mutualism** is an interaction characterized by mutual benefit, so both species benefit from the relationship. Example a flowering plant producing nectar to attract a bee, it benefits by feeding on the nectar, while the plant benefits because the bee goes on to disperse the plant's pollen.

**Commensalism** describes a relationship in which one species benefits but the other is unaffected. Examples of commensalism include a bird nesting in a tree. The bird is using the tree for shelter but the tree is unaffected. Commensalists have no effect on the host, others may benefit or harm the host.

## Community Based Partnership Practice Models

### Basic Development needs Partnership Model

The Basic Development Needs (BDN) Partnership Model described by WHO (2000) has been adopted by a number of countries with diverse social and economic circumstances in Africa. It aims at improving the quality of life of communities and individuals through a comprehensive development process which is planned and managed by the community. With BDN Partnership programmes and initiatives, accessibility of and coverage with health care services are intended to increase, with resultant decreases in morbidity and mortality. The BDN Model has also accommodated concepts such as poverty alleviation and healthy villages and enriched programmes with a community methodology that encompasses harmony and balance into social and economic development. This is sometimes called development with a human face. People are the key element in this change process. They decide upon the change, design it, manage it and carry it out. In turn, this increases each individual's perception of self, and each individual's perception of the community's identity. The BDN Model shifts the focus to community leadership and sustainability and away from short-lived externally driven interventions.

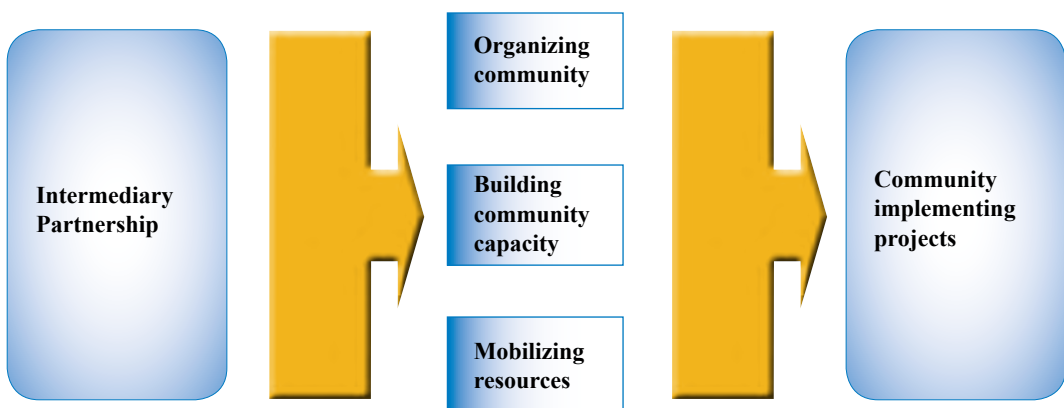


Figure 1: Basic Development Needs (BDN) Model (Source: WHO 2000)



The BDN Partnership Model hinges on community structures such as Village Development Committees to drive community agenda for improved livelihoods; however, these structures may not have adequate capacity to form effective partnerships with government and other key stakeholders. The structures rarely have in-built governance structures and are prey to conflicts and lack of leadership, unless a decisive move is taken to strengthen their operations.

Partnership approaches using the BDN Model are based on assumptions that guiding principles are adhered to by the partners, which may not always be the case. Grand principles such as applying human-rights-based approaches, ensuring gender equality and may end up as mere rhetoric and not as guides for concrete action.

### Community Based Development Model (CBDM)

The model is based on the philosophy that the best way to help those most in need is to involve them directly in the design and implementation of local environmental and economic development initiatives. This creates ownership, involvement, and financial sustainability well into the future. The CBDM is based on of training and execution, coupled with an enterprise approach, engages and inspires local residents to preserve their precious natural resources. The goal of a CBDM is to improve the quality of life in the

community through changes in knowledge, attitudes and behaviour or practice (e.g., health seeking behaviour, adoption of healthy practices), with the ultimate impact in health and development indicators. Processes used in this approach include: dialogue, participatory planning and implementation, engagement with key stakeholders and acknowledging and acting on the premise that beneficiaries or communities have a stake in the improvement of their lives, (Worldbank 2015).

The CBDM is based on the assumptions that communities are resourceful and that empowered communities are a prerequisite for improving individual and community. However, there has generally been weak pre-destined community engagement in the past. The selection criteria for communities that NGOs work with has been based on unclear criteria, spanning from donors' interests to the NGO's interests, and has even been to some extent, opportunistic.

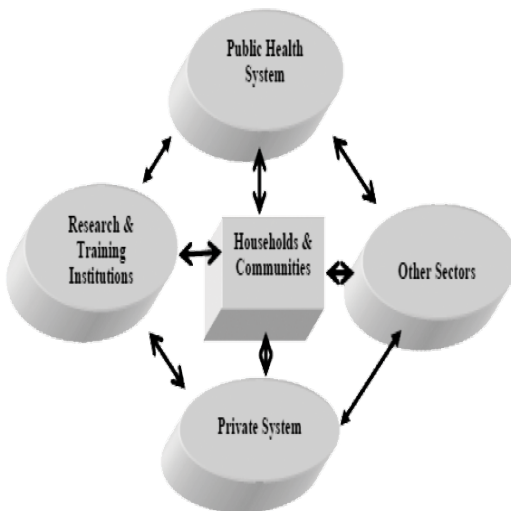
The CBDM assumes that beneficiaries or communities are the ones who need help or improvement and that external help is needed to bring about change in the community. Through this approach, communities are not able to fully prioritise and to use their resources to improve their lives; however, the community is a beneficiary and does not engage in an equal partnership relationship. The higher level partners in this approach are those that provide greater resources and have external linkages.



Source: <http://www.treeswaterpeople.org>

### TICH Partnership Model

The basis of TICH Partnership by Kaseje (2002) employs a number of theoretical concepts and includes the modified UNICEF capacity model which states that the capacity of an individual is directly proportional to ability, resources, authority and is proportional to responsibility. Other concepts employed in are cognitive theory, Covey's theory of 'first and second order change acting within the area of influence', the technical versus social effectiveness theory and the modified WHO poverty and health 'vicious to virtuous' cycle. The rationale for TICH partnership is that all people and communities have inherent capacities to undertake sustainable, collective actions to solve their own problems. However, they may need facilitation and support from a number of partners: the service system, the private sector and academic institutions.



Source: *The Tropical Institute of Community Health (TICH) toolkit, 2002*

While the TICH Model recognises the equal value of all partners' skills and contributions that lead to actions based on capacities, the model views households, and people as trapped in ill-health and poverty and are on the receiving end and hence not equal with other partners. The TICH Model is based on the assumption that partners will work together in sharing resources,

ideas and experiences to support and enrich the work of each, for higher level quality outcomes which are of positive value to all parties involved; it seeks to improve on participation and involvement by highlighting the partners' areas of influence and contribution. This assumption overlooks the fact that partners have their own priorities and strategic plans which determine their contribution to the partnerships. The partners may be rigid and work only from their own frame of reference which influences their involvement and resource allocation to the partnership. Thus partners may view each other as competitors.

### Challenge Based Partnership (CBP) Model

The CBP Partnership Model focuses on joint partnership on an equal basis where all the stakeholders play equal but differing roles. Mechanisms to integrate the partners are built at community, intermediary, district and at national levels. While agreement on the modalities of the CBP Model may be difficult, and the process for this type of partnership may be lengthy, the gains from this approach are likely to be long-term and sustainable for communities and their partners in development.



Source: Kaseje, M., Githae, M., Kimani, M. and Waithaka, E., 2010

The CBP model is based on a theoretical framework of participation in peace and

security by Pretty's (1994), seven-step level of participation aiming at enhancing genuine participation (cited in Dulani 2003). Pretty argues that the level of participation can take different forms and varying degree. In a genuine level of participation, the local communities are active and are empowered to retain control at all levels of the development process. The seven levels of participation as described by Pretty include: **Passive participation**; People participate by being told what is going to happen or what happened. **Participation in information giving**; People participate by answering questions posed by extractive researchers using questionnaire surveys. **Participation by consultation**; People participate by being consulted and based on their responses, external professionals define problems and solutions. **Participation for material incentives**; People participate by providing resources such as labor, in return for food, cash and other material incentives. **Functional participation**; People participate by forming groups to meet predetermined objectives related to the project. **Interactive participation**; People participate in joint analysis, which leads to action plans and the formation of new local institutions or the strengthening of existing ones. Participation is seen as a right, and not just a means to achieve project goals. **Self-mobilization**; People participate by taking initiatives, independent of external institutions, to change systems. They develop contacts with external institutions for

resources and technical advice they need, but retain control over how resources are used.

## The Vicious Circle of Insecurity and Need for Community Based Partnership

Insecurity is closely linked to the under development of human capabilities. The core focus of the capability approach is on what individuals are able to do (i.e., capable of). Capabilities approach predominant as a paradigm for policy debate in human development where it inspired the creation of the UN's Human Development Index (a popular measure of human development, capturing capabilities in health, education, and income). Poverty is understood as capability-deprivation. In the face of change and uncertainty individuals and communities faced with both rapid change and increasing uncertainty are challenged to respond and change in new ways that protect their social, economic environmental, and human rights, and that empower them to respond through both mitigation and adaptation. Beyond its interdependence, human security is also a precondition, development and sustainability, thus it contributes significantly toward the success of efforts to meet the Millennium Development Goals (MDGs) and achieve sustainable development, United Nations Convention to Combat Desertification (2015),



## Community Based Partnership Process

### Partnership Rules of Engagement

Partners need to establish values that support community engagement and align with comprehensive community partnership strategy. In addition ensure high quality service delivery and establish guiding principles for community engagement which may include:

**Shared Values:** Working with the community and partner organizations to mutually assess shared values, plans that prioritize the needs of the partners.

**Mutual Trust and Respect:** Building trust and respect using methods appropriate to the different partners by respectful inclusive.

**Commitment:** Partners guaranteed pledge and commitment of working with communities

**Accountability:** Partners answerability, responsibility and reliability in meaningful engagement with the community to ensure adherence to the partnership goals.

**Sharing of Power, Decision Making and Resources:** Approaches that determine the degree to which there is equitable sharing of power, decision making and resources among the partners.

### Barriers to community based Partnership

A number of challenges, tensions, and barriers related to the development and maintenance of partnerships at the community level. Although interrelated, they are:

**Lack of trust and respect:** The most frequently mentioned challenge to conducting effective community-based partnership is lack of trust and perceived lack of respect, particularly between partners. Mistrust sometimes develops into anger and suspicion. Community members may hesitate to get

involved even. Once established, trust cannot be taken for granted; but must continually prove their trustworthiness.

### Inequitable distribution of power and control:

The history and presence of power differentials among partners is another challenge. Community members are legitimately skeptical about whether the language of being “equal partners” can become a reality of shared ownership and control. Within any community partnership, the distribution of information, time, formal education, and income reflects broader social inequalities structured around race/ethnicity, class, and gender. These inequalities affect who attends, who participates, whose opinions are considered to be valid, and who has influence over decisions made.

### Community Entry

Various levels of the service system are reached through a careful process of relationship building with community gatekeepers, the goal being to gain understanding of the community and authority to work with community members.

### Situation Analysis

This involves integrated methodologies that help to establish locate the communities resources, strengthens, weakness, opportunities and threats (SWOT). Its a process of getting, giving and sharing information about the available resources and services.

### Participatory Feedback

The results of the analysis are fed back to stakeholders to confirm and validate the findings. The information is provided to the community in order to assess the current state, the systems at work, why problems exist and what can be done by the community to deal with the situations.

### Participatory Planning

The partners develop a roadmap based on capacities and resources identified in the situational analysis. Comprehensive planning starts with an assessment of the problem(s) at

hand, prioritising the needs, identifying resources needed and allocating them to the needs. It is important to engage the participation of different domains of the community (e.g. health, agriculture, social services, local government).

## Implementation

Based on the plan agreed on with the community, strategy are translated to chosen organizational action so as to achieve strategic goals and objectives. Organizational structure allocates special value developing tasks and roles to the employees and states how these tasks and roles can be correlated to maximize efficiency, quality and community satisfaction.

## Monitoring and Evaluation

Partnership should be monitored routinely and evaluated regularly using appropriate indicators. Sufficient flexibility is needed to respond to a dynamic and rapidly changing environment to evaluate progress and to identify areas where adjustments are needed to ensure effectiveness.

## Participatory Feedback and re-planning.

A participatory approach aims at guiding collective thinking and ensuring that previous interventions are reviewed and relevant plans are developed on the basis of the perceived needs and problems of beneficiaries and on local capacities and lessons from experience. In a participatory approach is one in which everyone who has a stake in the intervention has a voice, either in person or by representation.

## Conclusion and Recommendation

### Conclusion

Communities are facing new challenges that threaten partnerships. These include weak systems for peace and security development, emerging threats in security , changing trends in conflicts, as well as local and international policies that ultimately affect the communities in their contexts. When communities are

negatively labelled, they unconsciously have a negative attitude towards themselves and act as they are labelled. This hinders participation because communities feel inferior and take a passive role that does not result in sustainable change. On an equal basis, the partners come together to address issues facing them.

Given such challenges, community based partnership strategies need to utilized as a combination of measures which effectively address determinants of peace and security. This approach will empower communities to take a more active role in the partnership process. Communities will take the role of custodians of the partnership projects on a long-term basis and this has tremendous potential for sustainable change.

Partners need to view households as equal partners and not as people trapped in the vicious circle of insecurity. This will change the attitude of community peace and security stakeholders towards the community and will place communities at the same level in the partnership process, where households have unique contributions to the partnership and participate fully in decision making, planning and implementing initiatives that impact on community peace and security.

## Recommendations

This review proposes new approaches to partnerships that confront some of the gaps highlighted above on community partnership approaches. Thus this review proposes a Challenge based Partnership Model that addresses the gaps of mechanisms for integration of partners and which engenders an inclusive approach to health and development in communities.

Community based peace and security needs to focuses on joint partnership on an equal basis where all the stakeholders play equal but differing roles integrating long-term sustainable for communities and their partners in development.



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# **Peacekeeping Operations in International Peace and Security: A Case Study of Nigeria**

*Ayuba Caleb*

## **Abstract:**

The international environment is increasingly transiting through a complex phase characterized by violent conflicts and wars. This has exposed the reality that without the proactive intervention of peacekeeping troops to manage some of these hostilities, the tendency is the world will become more anarchic with devastating consequences on human beings and their material holdings. This is what the paper purpose to bring to the fore. Specifically, the paper will make a case study of the role Nigeria has been playing in enhancing the achievement of international peace and security. To craft the perspective articulated within the text, the paper leaned on the content analysis of existing literary materials within the social science academic traditional. By way of recommendation, the paper maintains that if the benign legacy of conflict prevention is to be sustained, it is imperative that peacekeeping operation be reorganized to focus more on adhering to Early Warning Signals (EWS) emanating from conflict prone areas so as to promote conflict prevention more than conflict resolution that is more expensive.

## **Introduction**

The search for international peace and security has dominated intellectual discourses and the practice of global diplomacy since the end of the Second World War. The threat to international stability was heightened by the evolution of a bi-polar order as a result of the ideologically motivated Cold War from 1945. Thus, the concern exhibited by foreign policy establishments and national governments across the world in the post war era was not without basis. This was due to the fact that a newly evolved international order characterised by anarchy and lawlessness had evolved to re-define the theory and praxis of international relations as crafted by the treaty of Westphalia in the 17th Century.

Expectedly, this historical phenomenon culminated in clashes betwixt these newly birth sovereign entities; clashes whose origin were often traced to the clandestine maneuverability of states in the foggy theater of the international environment all in the

pursuit of their geo-strategic interests. And because all states are involved in the effort of aggregating their national interest, they naturally become susceptible to biases in the course of promoting international peace, security and the resolution of conflicts. Therefore, the responsibility for the resolution of international conflict is left to umpires that are not aligned to any state or their interest. In this instance, this responsibility has been borne by the United Nations (UN) and other allied regional and Sub-regional institutions like the European Union (EU), the African Union, the Economic Community of West African States (ECOWAS) Economic Community of Central African States (ECCAS), the Arab League (AL) and many more of these organizations spread across the different regional blocs of the world (Kegley and Wittkopf, 1995).

This paper purposes to examine the nature of the international environment with regards its peace and security profile in contemporary international order. The paper will work on the assumption that the world is characterized by

intense competition and hence the resulting conflicts that have characterized the birthing of sovereign state actors within the global space. A more ambitious objective of the paper will be to bring to the fore some of the legal instruments existing within the UN humanitarian framework that give legitimacy for intervention in international and domestic conflicts despite the sovereignty status of states. Finally, the specific role of Nigeria in ensuring the achievement of international peace and security will be contextualized.

This paper is divided into nine sections including the introduction constituting section one. The second section deals with the methodological approach the paper relied on to weave its perspective. The third part was specifically directed at question of the nature of international environment since the institutionalization of state structures as the main drivers of international relations. The fourth section focuses on the analysis of the international legal instruments legitimizing intervention during armed conflicts. The fifth section proceeds to examine some aspects of the African charter of human and people's rights that are relevant to the protection of human rights. The sixth section was specifically addressed to the issues of Nigeria's role in conflict prevention diplomacy and the promotion of peace and security. The seventh part follows; this brings to the fore Nigeria's role in Chad in the attempt to reconcile the contesting factions in the Chadian conflict. The eighth part discusses the ECOMOG campaigns in conflict management and finally, the conclusion of the paper makes up the final (ninth) section.

## **Methodology:**

For the purpose of this study, the paper had deliberately depended on the qualitative research methodology to craft its thrust. By qualitative research, we are inferring studies whose data are not sourced through statistical instruments of analysis. Data was generated through the following mediums; observations,

interviews and the exploration and analysis of contemporary literary materials within the domain of international relations and specifically the area of peacekeeping. In particular, materials like books, journals, media based reports, official memoirs, government gazettes all proved relevant in the data generation process. In addition, some aspects of the paper relied on primary data collection method whereby some individuals in the field of international law and conflict resolution were interviewed and their views incorporated in crafting the thrust of the overall discourse.

## **The International Environment since the Institutionalization of States:**

In the process of scouring through literatures of conflict, war and the management of these phenomenon, it was discovered that experts have made effort at identifying the reasons for instability between human groups and between states—the geographical space that accommodates these human beings. These studies have begun with the individual as the unit of analysis and broadened their scope to the realm of the state and the international system ultimately. The result of Preliminary investigations have revealed different assumptions including that;

1. Aggressive behavior is innate and biologically programmed into the human species
2. Aggression is the result of frustration by other humans or circumstances; these frustrations create massive back-lashes leading to violent conflicts
3. A third school posits that aggressive behavior is essentially learned or a modeled behavior which is usually (but not necessarily) copied by the young from their elders in both formal and informal socialization processes (Mitchell, 1985: 123).

By this provision, younger/weaker states emulate the aggressive behavior of older/stronger states. These perspectives are relevant in linking the nexus between individual aggressiveness and general social and political violence (Mitchell, 1985). From the above, it has become evident that the aggressive tendencies of man subsisting in a territory called 'state' has origin in his biological constitution (Paige, 2009). It is this make-up that has produced the multiple wars that have littered the firmament of the history of human relations (Paige, 2009). Again this violent tendency in man has ensured that conflicts are hardly preventable nor resolved amicably by the use of traditional conflict resolution mechanism. Consequently, by the time most domestic and international conflicts come to an end, the uncured damage to human beings and their holdings are often devastating. For instance, by the time the world was emerging from the bunkers of World War II, over ten million people had been killed, empires devastated, new states birthed and the old geo-political order permanently altered (Kegley and Wittkopf, 1995: 76).

The truism of this reality (as articulated by the realist model) was captured by none other than the oracles of Post World War II realist paradigm including the theologian scholar, Reinhold Niebuhr, the quintessential diplomat, George Kennan (in Fukuyama, 1992) and Professor Hans Morgenthau (1985). All these neo liberal realist classicists had sustainably articulated the classical thoughts that the starting point for understanding world politics is to recognize that the course of human history shows that nations active in international politics are continuously preparing for, actively in, or just emerging/recovering from the throes of organized violence in the form of war with its attendant bloodshed, devastations to national, regional and international peace and security becoming the norm (In Fukuyama, 1992: 247). Even in ancient times Plato (in Sagan, 1979) had submitted the hardly disputable thesis that 'war must be regarded as the fundamental fact of political life, indeed of all life, and that every

decision of consequence must be made with that fact in mind'. This trend and conflict dynamic has by 1991 produced twenty seven battle fields across the world (Fung, 1996: 65). In fact many more theatres are being created as the years role-by and individual nation's interests and those of the strategic coalitions they align with becoming increasingly more complex.

In fact the realist thinking that has shaped the nature of relations between the system of states in the international environment since the frequently referenced treaty of Westphalia could be connected to the classical orientation of Niccollo Machiavelli (1469-1527). In 'The Prince' Machiavelli has explicitly contributed what he calls the justification for rulers to kill to maintain their positions of power and to 'advance the *virtu*, *fame*, and honor of their states' if they are to survive and influence international activities to their benefits (Paige, 2009). 'It is better to rule by craftiness of a "fox," but when necessary rulers should not shrink from the bold lethality of a "lion." He prescribes citizen militias to strengthen the power of the republican state' in their competitive stance against other state actors (Paige, 2009).

These perceptions have greatly influenced the behavior of every unit within the system to conduct affairs in a manner that promotes its benefits and reduces its losses (Craig 1994: 17). This condition has clearly made every actor extremely selfish in the pursuit of its will and interest. Therefore, in the light of the non-existence of state actors to moderate the global environment in an egalitarian and equitable manner, the imperative for the mobilization of neutral international troops to confront international insecurity has become a necessity. Ironically, in referencing earlier epochs, it was discovered that in the 19th Century international peace and stability was largely dependent on parity in power relations between coalitions. In the century following on the contrary, peace was a product of what Rueck (1985: 113) had described as the 'preponderance of the leading

coalitions' to achieve peace. Thus, without mincing words, it could be safely asserted that the major instrument that determines peace and security in an anarchic global system is undoubtedly the ability to acquire and maintain power which deters any potential threat (Waltz, 1971).

## **International Legal Instruments Legitimizing Intervention in Global Disorder:**

This section aims at bringing to the fore the existing legal instruments instituted by the UN system and other allied regional organizations to ensure adherence to international law with regards intervention to prevent or manage conflicts and the best approach to follow during the process of intervention with regards obedience to the rules of Engagements (RoE) during operations. In this instance, the kind of intervention inferred is the one that references forced military incursion into a territory, non-military actions like sanctions by the United Nations in the affairs of states that is (are) recognized in international law as sovereign entities, based essentially on humanitarian considerations. There are two core elements to this definition. First, there is a clear lack of consent on the part of the target state and, second, the intervention is motivated by humanitarian concerns, such as human sufferings or threats to lives (Ludlow, 1999). Some have argued for a wider definition of humanitarian interventions in order to understand the best ways to deal with the increasingly complex humanitarian crises in the world today. This thinking is premised on the assumption that humanitarian activities and international interventions today take many forms. This conclusion is important because the norm in contemporary international relations acknowledges activities like foreign aid and development programs initiated by states and organizations like the UN and non-governmental organizations (NGOs); diplomatic and economic sanctions or attempts at third party mediation as humanitarian interventions (Ludlow, 1999).

But for the purpose of this paper, the challenge that should warrant intervention should naturally include basically the challenge to human rights. These rights have two core components associated with them in a closely interrelated manner. Obviously, the consensus of all approaches is that right to life must be considered uppermost. The right to life necessarily implies the need for the following physiological requirements; food, water, shelter and security (Dakas, 2014). The fact must be borne in mind that scholars are not in consensual agreement with regards a comprehensive or prioritized list of rights. However, the Universal Declaration of Human Rights of 1948 is instructive in availing us the issues that should take the place of primacy in this regards. This document accordingly has listed in order, the right to life, liberty and security of person, freedom from slavery or servitude and freedom from torture or cruel, inhuman and degrading treatment. While this list clearly does not reflect the rights that all people currently enjoy, they do represent an international consensus on the rights that all humans ought to enjoy (Dakas, 2014).

The above provisions which are sourced from the Charter of the UN and the Universal Declaration of Human Rights have been domesticated into the African Charter of Human and Peoples Rights. Article 4 in line with the UN charter states that;

Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may arbitrarily be deprived of this right.

In the same vein, the adherents of the Solidarists school of international law point to certain specific provisions of the United Nations' (UN) charter to justify their call for intervention in the case of human rights abuses (Hobbes, 1651). Let's take the following provisions into view; Chapter vii of the Charter especially provides the needed locus for intervention in the event of crass human rights abuse(s). Note too that



Article 42 of this chapter (vii) consist the clearly spelt-out provision that gives permission and even out rightly authorizes the Security Council to take the needed action by air, sea, or the deployment of land troops as may be deemed appropriate to maintain or restore international peace and security in any identified violent conflict theatre (Ludlow, 1999, Ebo, 1994). Under Article 43, all members of the UN shall undertake to make available to the Security Council troops-for Peacekeeping or Peace Support Operations-when the need for the aforementioned intervention arises (Ludlow, 1999).

Of particular note is the 1948 Convention on Genocide which makes genocide a crime under international law and commits all members of the international community to “prevent and punish” it (Ludlow, 1999). On the same human rights concern and what could easily be termed the failings of international and regional organizations the Solidarists have further maintained that Human rights violations and widespread suffering cause instability and thereby threaten international peace. The authors of the Universal Declaration of Human Rights seem to acknowledge this while stating that; ‘it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected.’ Since violent human rights abuses and large-scale human suffering threaten international peace and stability, the UN may intervene forcefully to preserve them’ (Ludlow, 1999).

Finally, the moral and ethical conception and argument that justifies intervention in the face of humanitarian challenge—irrespective of the sovereignty statutes in international law as derived from Simon Caney (1997), who has coherently noted that all human cultures irrespective of history and orientation; be they of the Judeo/Christian and Islamic creed; or even of the trinity of Jains, Hindu or Buddhist values, the sanctity of human life is upheld as it is greatly revered. In the same vein, it is nearly inconceivable to imagine

any culture that welcomes drought, famine, disease, murder and malnutrition which are all vehicles for conveying humanitarian disasters. ‘Consequently, cosmopolitan principles of humanitarian intervention that seek to eradicate these are not imposing values on societies which those societies reject’. Caney (1997) proceeds in the same virile thrust to present a mental imagery wherein a state is persecuting a cultural minority either through violent onslaughts or through the deprivations of the means of sustenance and those charged with the responsibility for ensuring that justice is maintained just stand aloof. In such a scenario, humanitarian intervention can be justified if it intervenes and protects the minority victim population.

Having articulated the normative framework that gives legitimacy for intervention in conflicts, it is necessary to say that the UN and other allied regional and sub regional organizations as listed previously have proven relevant in the complex craft of conflict prevention and resolution. It has thus become acceptable norm in the reasoning of international actors and foreign policy think-tanks across the world that ‘if conflict cannot be prevented, it must be contained, managed or resolved by all possible means’ (Fung, 1996). Consequently, by the end of the Second World War, Peace-keeping as a strategic technique for managing conflict scenarios had evolved. While in operation, Peace-keepers are not expected to fight but to contribute in creating, of course in a relatively benign manner, an environment that will facilitate the disengagement of troops engaged in conflict. This is to give room for the resolution of the conflict question through diplomatic and political initiatives (Fung: 1996: 65). ‘such middle ground solution was conceived in 1948 when the UNSC deployed soldiers without arms as ‘mere observers’ to Palestine to supervise a truce brokered by the legendary Count Bernadotte during what is popular referred to as the first Arab-Israel war.

Historically, this seemingly ad hoc arrangement known as the United Nations Truce Supervision Organization (UNTSO) ‘marked the formal

birth of what is widely known as the United Nations Peace-Keeping (Alan, 1990). Since then, as many as sixty nine peacekeeping operations have been deployed to many parts of the world especially within the African violent theatres. According to Mbugua (2014) 'As at September 2014, 16 UN peacekeeping missions were in operation, of which 9 are in Africa'. In an ironic twist, Mbugua (2014) further maintains that as at the same 2014, the African continent contributes the largest numbers of troops for peacekeeping missions on the globe and 'it also hosts the largest troop and police contributing countries such as Ethiopia with (6,528), Rwanda (4,709), Nigeria (4,619), Ghana (2,992) and Senegal (2,967); that are the top five peacekeeping staff contributors among the African states to the UN', (2014).

## **The African Charter of Human and Peoples Rights**

In this section, the paper will address the specific aspects that cover areas that discuss the issues of human rights. This is due to the fact that it is these legal provisions that give locus for intervention in violent conflict environments. In other words, it is the legal codes that give legitimacy to peacekeeping troops to move into a territory to prevent human rights abuses and humanitarian disasters.

It is therefore necessary to maintain that the Charter of the AU have provisions that equips the organization to tackle contemporary threats to regional peace and security. The current African leaderships have recognized that peace and human security are critical to African development initiatives and have made it a cardinal priority by establishing the African Union peace and security architecture. This includes the protocol relating to the establishment of the peace and Security Council (PSC); the African standby Force; the continental early warning system and the panel of the wise. This is apart from the African Union peace fund. Another key area that the AU have focused on is its determination to promote

human rights. The primary responsibility of the OAU was to protect the national sovereignty of member states and as such did not allow interference in their internal affairs. The AU also respects national sovereignty, but has gone further to authorize rights of intervention in grave circumstances in line with the global resolve for humanitarian protection under the Responsibility to Protect (R2P). The AU also respects national sovereignty, but has gone further to acknowledge the right of the Union to intervene in a member state in order to restore peace and stability to prevent genocide, war crimes, and crimes against humanity (Article 4 (h)). Article 3, sub-sections 1 (e) and (f) of the constitutive act emphasizes the promotion and the guarantee and respect for the basic human rights and citizens of states. Notwithstanding these arrangements, the AU is still grappling with numerous challenges including funding, lack of stand by forces to intervene in conflicts and frequent interference by external powers. Thus this negates the desire to 'find African solutions to African problems' (Sharkdam, 2014).

## **The role of Nigeria in Peacekeeping Operations:**

In this section, the paper will concentrate its attention to analysing the areas and the manner in which the Nigerian government has contributed to the prevention of violent conflicts and the management of the same phenomenon on the African continent and the world at large. Of course this discourse will be approached on the basis of Nigeria's participation in these activities under the international and sometimes subregional peacekeeping initiatives. The paper will also bring to the fore the military institution that has played an enviable role in the prevention and management of conflicts during peacekeeping operations from the moment Nigeria became an independent country in 1960. In this vein, it is imperative to mention from the outset that apart from certain bleak but insignificant aspects of the Nigerian military; like its

rebellion against constitutionally instituted governments leading to coups and counter coup d'états and other activities like a protracted sour civil military relations, the Nigerian military has played an important role in stabilizing international peace and security (Kolade, 2015).

### **Nigeria in the Chadian Conflict:**

Between 1970s and 1980s, Nigeria moved into Chad to help in the management of the violent conflict that was threatening the survival of that country. However, Nigeria's intervention was not purely on humanitarian or benevolent basis. Chad is one of the countries that is of strategic importance to Nigeria's security interest. A country bordering Nigeria's north eastern fringes should naturally be of utmost importance to Nigeria's national interests. This neo-realist paradigm was largely responsible for Nigeria's foreign policy decisions during this period. The Chadian menace was a major challenge for the Nigerian authority under the administration of the then president, Alhaji Shehu Shagari. However, this violent phenomenon was inherited from the days of Gen. Olusegun Obasanjo, the predecessor to Shehu Shagari. As observed above, for both geo-political and security concern, Chad had constituted and important source of concern for Nigeria. This is basically because any time the security situation in Chad became precarious, it always affected the Nigerian states of Borno and her contiguous territories. These negative effects covered the areas of massive refugee flow of displaced Chadians to Nigeria. In addition, small and light weapons proliferation (SLWP) became evident at such auspicious times. This development played out most significantly during the riotous religious ferments that characterized these troubled times in both Maiduguri and Kano in 1982 and 1983 respectively.(Olayiwole, 2003: 108). In fact the intervention of external forces in this crisis often resulted in its escalation constituting a big security issue across the entire African continent. (Kolade, 2015).

True to the fears of the Nigerian government, the conflicts in Chad greatly impacted on the security situation in Nigeria's north east and western regions. It must at this juncture be borne in mind that the extremely porous border between Nigeria and Chad influenced the flow of arms into Nigeria which also necessitated the decision of Nigeria's federal authority to organize and host a meeting in 1979 in Kano to broker peace between parties to this conflict. This high powered subregional meeting recorded the presence of the Chadian President, Felix Malloum and his Prime-Minister, Hessen Habre who led the Forces Armées du Nord (FAN). The popular armed forces under the leadership of Ghoukoni Waddeye and the popular movement for the liberation of Chad (MPLT) led by Aboubacar Abderrahemane were all in attendance to this landmark diplomatic initiative aimed at peacebuilding. There were equally in attendance ministerial delegations from all countries sharing common borders with Chad: Libya, Sudan, Niger and Cameroun. The OAU was also represented by its assistant Secretary General for political affairs, Peter Onu (Olayiwole, 2003: 109). After seven days of intensive deliberations, an accord was signed between the conflicting parties. It was recommended that;

- The existing government be dissolved forthwith.
- President Felix Malloum and his Prime Minister step down from the helm of governance.
- That a transitional government of national unity composed of recognized factions be formed.
- Nigeria provides a neutral peace – keeping force to supervise the demilitarization of N'Djamena and general cease-fire.
- Nigerian troops provides security and protection to all Chadian leaders after all factions had moved to a radius of 100 km from the capital.

- The Nigerian troops take control of the Chadian airspace to ensure safety and free movement

This noble initiative of the Nigerian government in the pursuit of a robust foreign policy that is shaped by an afro-centric orientation aimed at assisting a neighbor in trouble that could result in its disintegration. However, the French authorities in Paris misconstrued the peace initiative by the Nigerian government. They perceived Nigeria's massive military build-up on land and air and the proactive role it played during the conference as an affront to the French hegemonic interest in her African colonial estate. Hence she conspired against Nigeria and the entire military campaign ended in failure (Olayiwole, 2003: 108).

## **The ECOMOGs Campaigns and Conflict Management**

Nigeria was very instrumental when the Economic Community of West African states (ECOWAS) moved into both the violent conflict ravaged countries of Liberia and Sierra Leone. Nigeria's intervention drew legitimacy when it keyed into the existent legal framework operational at both the UN and the OAU/AU charters which endorsed intervention when humanitarian predicaments were observed (Sanda, 2004: 303). It is important to add at this juncture that the behavior of Nigeria and her foreign policy orientation as global actor was determined by her understanding that peace does not just happen. It has to be conceived and arsidously pursuit to achieve (Schirch, 2004). Thus, referencing the ECOWAS initiative in Liberia and Sierra Leone, Peter Opara had opined that intervention had become imperative and the best tool that will ensure the stability of the continent and the survival of its civilizational legacies. This position is arrived at with the knowledge that the ECOWAS' dream of economic integration and one market system cannot be achieved if other concomitant issues like regional politics and defense and security concerns are not central to the overall thrust.

Thus, acting on this understanding, the Heads of States in 1978 had unanimously agreed to modify the treaty that constituted the community, which previously did not accommodate any collective security provision. This time, the summit adapted within its protocols a non aggression component to its constitutive Act. The defense pact that was adopted in 1981, agreed to provide mutual assistance to signatories of the pact in the case of any external aggression and internal armed conflicts. This legal instrument gave legitimacy to the existence and operations of the ECOMOG in Liberia and Sierra Leone. The successes recorded by the ECOMOG in her engagements in West Africa, according to Nigerian's Ministry of Foreign Affairs (because of the leading role played by Nigeria) have affected her global rating as a key model in regional conflict resolution efforts. For instance, the UN in its resolution 788 that was adopted in 1992 arrived at the consensual conclusion that the ECOMOG represents a good model of a systematic co-operation between the UN and regional organizations as conceived of in chapter viii of the charter of the world organization (the UN).

Even before this highly commendable feat was achieved in Liberia and Sierra Leone, Nigeria had participated in many other peacekeeping operations. Nigeria had contributed troops to operations in Africa, Asia and the Middle East regions of the world. The records are as follows: sending a battalion to Congo (UNOC) 1960-1964; Military observers to new Guinea (UNSF) 1962-1963; battalion to Tanzania by bilateral agreement 1964; Military observers during the India-Pakistan conflict (UNIPOM) 1965-1966; battalion and staff officers to Lebanon (UNIFIL), 1978-1983; battalion and staff officers to Chad (Harmony I, via bilateral agreement) 1981-1982; brigade to Chad (Harmony II, under the auspices of OAU) 1982-1983; military observers during Iran-Iraq conflict (UNIMOG) 1988-1991; division to Liberia (ECOMOG) 1990 to date; military observers for Iraq-Kuwait (UNIKOM) 1991, and to Angola (NAVEMII) 1991-1992; training

teams for Sierra Leone (NATNG) 1992-1995; military observers to Namibia (UNTAG) 1989-1990; to western Sahara (MINURSO) 1991; and to Cambodia (UNTAC) 1992-1993. The country also contributed a battalion and staff officers to Somalia (UNOSOM) 1992-1994; (Ahmed, M.S, 2010), battalion and staff officers to the former Yugoslavia (UNPROFOR) 1992; military observers to Mozambique (ONUMOZ) 1992; a battalion to Rwanda; (UNAMIR) 1993; training teams to the Gambia (NATAG) 1993; military observers A ouzo strip (UNASOG) 1994; and to Israel (UNTSO) 1995; Liberia (ECOMOG) 1987; Sierra Leone (ECOMOG) 1996; Darfur (UNAMID) 2003. (El-Rufai, 2012).

The above facts establishes Nigeria's foreign policy thrust as one that is determined to contribute to the preservation of international peace and security (Yoroms, 2004). In monetary terms, the contributions of Nigeria to regional peace missions in Liberia and Sierra Leone alone were in excess of US \$10 Billion. This is apart from the large numbers of human beings (Nigerian soldiers) killed in the effort to build peace in the different areas the country was engaged in. In addition, Yoroms (2004) had summed the matter by maintaining that;

Nigeria also on its own volition has expended more than \$90 Million through the OAU peace keeping force that was deployed to Chad in the early 1980's. In 1990's Nigeria through ECOWAS launched ECOMOG and also bore most of the cost attendant to such endeavour and in turn had made the ECOMOG experience an ideal model and benchmark for UN in the way that it views the role of regional peace keepers, and the need to partner with such regional groups that have a lot at stake in keeping the peace in troubled regions. Other

areas of success will include the Nigerian role through the leadership of President Olusegun Obasanjo in reversing the military coup d'état that took place in Sao Tome, and also the ability and leadership that was exercised by Nigeria in convincing former Liberia President, Charles Taylor to accept exile in Nigeria thereby paving the way for a peaceful elections in Liberia and a successful return of that country to a democratic regime.

## Conclusions

In conclusion, it is clear that since the establishment of the United Nations in 1945, the world has experienced more incidences of violent conflicts that have increasingly threatened the global order. In reality, except for the highly proactive initiative of Count Bernadotte in conceiving the international peacekeeping and peace support initiatives, these challenges would have been more devastating largely due to the avarice that influences the formation of the foreign policies of individual nations within the international system of states. Interestingly, the annals have confirmed that Nigeria is active in this initiative thereby contributing immensely to the preservation of international peace and security. As at today, Nigeria is adjudged one of the biggest Troops Contributing Countries (TCC) to the UN, AU and the ECOWAS. It is the view of this paper that if the benign legacy of intervention in violent conflict prone areas is to survive, it is imperative that peacekeeping and peace support operations be reorganized to focus more on adherence to Conflict Early Warning Signals (CEWS) emanating from conflict prone areas so as to promote conflict prevention initiative more than conflict resolution that is more expensive.



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# Terrorism, Counterterrorism and Human Rights Debate: A Critical Appraisal

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## Abstract

While terrorism is not a new phenomenon its nature, dynamics and magnitude continue to present many a research puzzle for scholars, security and/or policy practitioners alike. Taking on a critical descriptive approach, this paper sheds light on the “terrorism, counterterrorism and human rights debate,” the end objective being, to critically examine how terrorism and the efforts to counter it at various levels feature in the human rights research program over the past one-and-a-half decades of the 21<sup>st</sup> century. At the centre of the debate is the contention that while terrorism is at times presented as a “weapon of the weak,” whose rights have been violated; at the same time thousands of innocent people have lost their lives to acts of terror over during this period. Yet in the vein, at times, human rights violations have taken place as states attempt to counter terrorism over this period. As such, terrorism and the fight against it continue to feature strongly in the human rights agenda. While counterterrorism may provide an “escape route” for irresponsible governments to get away with anything (the use of two wrongs to make a right); the terrorist is in many ways *hosti humani generis*- enemy of all humanity. In the final analysis, this paper arrives at the conclusion that a well thought-out and properly governed counterterrorism agenda that engenders responsible government action in the noble duty of protecting humanity from the ravages of the heinous acts of terrorism remains key to a better environment as far as the counterterrorism-human rights debate is concerned.

## Introduction

Late 2014 and early 2015 once gain, brought to the attention of the world, the reality of terrorism; while invoking the dark past that was epitomized by the 11th September Attacks on US soil that left close to 3,000 dead and scores maimed and injured. The siege on a restaurant in Sidney in December and the attack on a media house in Paris, in January reminded humanity that counterterrorism is no option for governments. Nonetheless, as governments face the terrorist, the *hosti humani generis*,<sup>56</sup> from time to time, this noble undertaking has proved to be counterproductive, especially when the very people who need protection from terrorism fall victim to their protectors- governments. In a nutshell, the journey of human rights has been long and treacherous, spanning at least three centuries: right from the

age of liberalism in Western Europe that gave impetus to the “social contract,” the abolition of slavery and the enfranchisement of women; through to the emancipation of colonized and racially segregated peoples. As the second half of the 20<sup>th</sup> century came to a close, a solid body of international human rights regimes, practices and customs came into place, with issues ranging from the general aura postulated in the United Nations Charter (1945), Universal Declaration of Human Rights (1948), through to the political and socioeconomic realm as enshrined in the 1966 twin covenants- the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Cultural, Social and Economic Rights (ICCSE) (Shaw 2003).

Furthermore, even more specific international legal instruments with global-wide support

emerged on the latter half of the 20th century, including the Convention Against all Forms of Torture, Inhuman and Degrading Punishment (CAT), the Convention Against all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), as well as the 1998 Rome Statute, which saw the establishment of the International Criminal Court (ICC)- a body established to provide justice and enforce international law in light of gross human rights violations and grievous crimes including genocide, war crimes, mass murder, forceful transfer of populations amongst other crimes against humanity, international law and international peace (DeLeat 2006, 4-7). It is noteworthy that the Rome Statute is by extension part of a broader international humanitarian law legacy that dates back to the United Nations Convention in Prevention and Punishment of the Crime of Genocide; popularly known as the Genocide Convention (1948), the Tokyo and Nuremberg Trials (1949) and the Geneva Conventions (1949) and Additional Protocols (1977), (Des Forges 1995; Meron and Galbraith 2007). While much ground has been covered towards institutionalizing human rights through these well established channels, many challenges continue to plague the human rights cause especially in countries where underlying structural realities associated with widespread rural poverty and ignorance, high unemployment and urban destitution, gross food insecurity and resource scarcity and bad governance and official corruption have provided fertile grounds for the proliferation of ills such as global terrorism, while at the same convoluting global efforts to counter it.

One outstanding feature that has characterized the journey of human rights over this entire period is that the very nature of a human rights abuse in one part of the world at any point in history eventually emerges to provide a platform of change and an enduring reference-point in as far as the institutionalization of a particular human rights domain is concerned. A good example is the era of colonialism and racial segregation in Africa in the latter-half of the 20<sup>th</sup>

Century. The US-based civil rights movement and the wider Pan-African movement also provided an important “demonstration effect” for peoples under similar circumstances in Asia, Africa and other parts of the world in subsequent years. Subsequently, human rights violations (including acts of terror) in and of themselves on one hand; and the various efforts to counter them on the other, are intricately related and continue to be important issues that continue to attract academic and policy attention alike.

In the final analysis, this paper holds that the very grievous and complex nature of terrorism and the efforts to combat it as it is understood by the community of world states today, is acting as an emergent frontier in the institutionalization of human rights in terms of protecting the would-be innocent victims of both terrorism and counterterrorism processes alike; more so in the context of terrorism and the various national, regional and global efforts to combat it over the past decade-and-a-half or so, particularly following the September 11, 2001 attack on the United States. Towards this end, I utilize a critical qualitative-descriptive approach to the issues under investigation herein. As such, secondary sources of data mainly documented sources on the ‘terrorism, counterterrorism and human rights debate’ are utilized herein, with the aim of trying and establish patterns that speak to the idea that the terrorism-counterterrorism nexus has a special place in the global human rights discourse in the 21<sup>st</sup> Century.

## **Terrorism, Counterterrorism and Human Rights: Exploring the Theoretical Link**

Terrorism and the responses to it constitute a complex domain. It involves intricately related physiological and psychological means and ends. There is always a *sender* and an *immediate* (or proxy) *target* and an *ultimate end-objective recipient and/or target*- the underlying final target

and rationale behind any act of terror. Modern political scientists simply view terrorism as signal sending- a way through which the sender (by unleashing sharp and brutal punishment on the proxy or immediate target) makes known their disposition as a highly resolved type that is ready to pay the heaviest possible cost to meet their ultimate-end objective. Perhaps terrorism is more political than anything. A potent political weapon (though it may be presented as a “violent ideology that holds no value for human life or regard for human dignity”)<sup>56</sup> mostly employed by conventionally weaker adversary whose message is “*we shall punish your so called innocent civilians in such brutal manner so that they (the affected citizens) will prevail upon you and your friends and the friends of your friends let us have our way*” to gain well rationally calculated goals. To the scientific analyst of conflict processes, it is only fool-hardy to dismiss and label acts of terror as simply senseless irrational acts. Bargaining and deterrence theorists for instance contend that what may appear irrational is in fact “rational” so long as the actor who partakes of such “irrationality” is clear about their goal and why they want to achieve it- otherwise it will never make any sense to anyone why someone with their full mental faculties in a market place packed with innocent women in children (at times of their own race, lineage and religion) and execute a deadly suicide attack in which he or she is the primary casualty.

But in the same vein, governments acting on shared and well collected and verifiable actionable intelligence about the clear, present and imminent plan to carryout such terror attacks will do anything to stop and “take-out” (which is civilized way to mean killing, destroying, decimating and completely annihilating the target) the core suspect(s) in the scheme and their facilitators to save the many innocent and precious lives of citizens they are mandated to protect- for that is the “rational” thing to do and to meet the equally “rational” terrorist. For this cardinal reason, the counter-terrorist can be as equally highly resolved: “...you cannot wait us out...you cannot defeat us...the fight continues

and we will never waver...we rise up to the challenge, we persevere and we get the job done” were the words of US Secretary of State Hillary Clinton following the killing of Osama Bin Laden by US Special Forces in Abbottabad, Pakistan on May 1<sup>st</sup> 2011.<sup>56</sup>

Be it as it may however, both terrorism acts by fundamentalists and their sympathizers and counterterrorism measures on the part of state security agencies may well be seen as processes of *signaling resolve* and one’s *type* (Kydd and Walter 2006). The terrorists want some form of yielding action on the part of their end-target, who may behave just how the terrorist wanted; that is, by behaving like the terrorist in trying to counter the terror threat; or at times make concessions in favor of the terrorists’ interests. On the one hand, governments may want to signal resolve and raise the bar so high that the terrorists would have to think twice before making a move. At times, governments can take the war to the terrorists’ homes- their friends and relatives, or communities at large- and hit them so hard to the point that the terrorists’ kin turn against one another and soon confusion reigns and the ultimate political message that the terrorist group was making loses meaning and/or general appeal. As such, what may appear to the layman as pure irrational horror can be seen as a game of strategic bargaining and credibility building between highly strategic actors- terror groups on one hand, and government on the other (Siegel and Young 2009, 775-776).

Nonetheless, the problem with fully understanding terrorism is that while the relationship between the sender and ultimate end-objective recipient of it, is clear and straightforward; the sad reality is that impact the sender’s actions have on the *immediate* and/or proxy target; who happens to be the *innocent victim of the act* and almost invariably has nothing to do with the underlying relationship between the sender and the ultimate end-objective recipient, is at the least incomprehensible and utterly unjustified. As such, each time an act of terrorism occurs, an

innocent human being (a child, a woman or man- generally *unarmed innocent civilians*) is violated and exposed to a heinous form of inhuman treatment and brutality with both physical as well as far reaching emotional and psychological effects in relatives, friends and communities over time and space. Yet it even becomes more convoluted because; depending on who you ask, the *sender* and the *ultimate end-objective recipient* of the act of terror may well point at each other as “the terrorist,” and before you know one man’s terrorist becomes another’s hero- the villains of yesteryears then become today’s heroes and vice versa. Furthermore, terrorism has been used over this period as an instrument of statecraft with accusations and counter-accusations within and among sovereign states of funding and or otherwise indirectly abating terrorism against an adversary. It may be recalled that “losers” in the post-2011 Arab Spring phenomenon and related events in the recent past, the likes of Muammar Gaddafi of Libya, Hosni Mubarak of Egypt, Ben Ali of Tunisia and most recently Assad of Syria have apparently blamed their woes on “terror groups,” that interestingly have received material and financial support (at least indirectly) from Western powers.

But one fact is clear, no matter whom the end-objective recipient of terror is, or who the sender is and why; the innocent victim of this state of affairs, the (proxy-target, who could be anyone- women, children, innocent non-combatants) remains a violated and endangered species- a state of things that brings human rights issues at the very centre of the terrorism-counterterrorism discourse. As such, the terrorism/counterterrorism-nexus presents a ‘complex web scenario’ with a unique undercurrent cutting across it- the human rights debate. At this juncture, this paper adopts the *violations approach* fronted by the likes of Kalantry et al (2010). The idea is that one can point to various human rights violations associated with the terrorism-counterterrorism nexus with specific reference to certain core human rights instruments, in addition to

several pertinent domains of international customary law. The sanctity of human life as an inalienable right comes to mind here. In this direction, a number of pertinent moral, legal and political issues further illuminate the debate. The Universal Declaration of Human Rights (UDHR), with the right to life remaining a core issue. Subsequently, the International Convention in Civil and Political Rights (ICCPR) is yet another; and by extension, the International Convention on Economic, Social and Cultural Rights (ICESCR). The former, UDHR is a matter of custom, while the latter two are a matter of legal obligation. As such, the very act of terror on innocent civilians is a violation of human rights just as the killing of innocent persons in the war on terror is. Borrowing a leaf from Kalantry et al (2010, 354) it is important to understand what constitutes violations in the language of these treaties, the obligations of states (and related actors) pertaining to the said right and what benchmarks one would use to measure progress or otherwise, retrogression as far as treaty implementation is concerned.

In the same token, it would be important to see what states have in place in as far as their counter-terrorism instruments at the legislative and/or operational level is concerned. For instance, what do Counterterrorism Act(s) provide for as far as the safeguarding of human rights is concerned? Subsequently, specific reference to counter-terrorism instruments such UNSC Resolution 1373 and other country-specific Acts and what they have to offer in terms of safeguarding human rights in their counter-terrorism agendas is something to consider too (Rosand 2003, 233-234). Yet another issue worth illuminating herein also, is the level and/or framework of analysis in the debate. Intra-state specific terrorism-counterterrorism actions (either by state or other actors) on one hand and inter-state or externally driven terrorism-counterterrorism platforms on the other (bilaterally, multilaterally or otherwise) ought to be accounted for. Nonetheless, this paper argues that both levels are likely to interact and/or converge from time to time.



## **Global Terrorism and Counter-Terrorism Trends since 2000: An Overview**

Terror is not new, let's be clear about this. But its methods have changed over time and space. Nazi Germany employed absolute terror in its victims in the Holocaust and so did the slave owners, caliphates, sultanates and empire builders of old and their colonizing and racist counterparts of the modern era. Yet today's terrorism is more "faceless," sophisticated and truly "unconventional," capitalizing on sharp and brutal surprise and far-reaching effects on the weakest and most unexpected targets to send the message across to its ultimate end-objective recipients. This trend began to be noticed in the late 1960s and 1970s where terror attacks were characterized by the hijacking of passenger planes and taking of hostages as well as the bombings of certain civilian targets as was the case with the Munich Attack in September 1972 or the sporadic bombings by Irish Republican Army operatives on their British targets. As the 1980s set-in similar attacks were orchestrated by anti-Israeli militants within and around Israeli territory. On New Year's Eve December 31<sup>st</sup> 1980, a bomb was hurled at a British owned Norfolk Hotel in Nairobi, Kenya in reaction to Kenya's help for the Israel during the Entebbe Raid of 1973 in which Israeli Commandoes rescued several Israeli citizens from the hands of anti-Israeli militants. These attacks were more often far and wide and ostensibly with a more "political" disposition to it.

It must also be recalled that in these years (1960s through to the 1980s), many a liberation movements were in place in what appeared to be Cold War driven proxy machinations from Latin America, through to Asia and Africa. To this end, national liberation fighters in Southern Africa including Nelson Mandela, Sam Nujoma, Samora Marchell and Robert Mugabe and Kenneth Kaunda were no less than terrorists in the eyes of Apartheid South Africa. So was Yasser Arafat who led the

Palestinian Liberation Organization (PLO) and Jerry Adams of the Irish Republican Army's political wing Shenfeign. Yet these leaders, alongside others were to later gain world recognition for their role of working towards peace to the extent of winning the Nobel Peace Prize.

Be it as it may however, as the post-Cold War period set in, a new theatre of terrorism was taking shape around the world, and by the time the Twin Towers in New York came down and a direct attack on the Pentagon, the military headquarters of the world's undisputed Super Power, on September 11 2001, in the hands of American-trained pilots of Middle-Eastern origin, now turned Al Qaeda operatives, it was clear that a new age of terrorism and the global responses to it had been born. While the attack on the Pentagon may have passed to be squarely an attack on a military target (the only one since the Japanese Attack on Pearl Harbor on December 7<sup>th</sup> 1941), the lives of over 2000 innocent civilians lost in New York, Washington D.C and Pennsylvania that brought the entire world to terms with the stark realities of the new face of terrorism in the 21<sup>st</sup> Century (Sofaer 2003).

True enough, extraordinary times called for extraordinary measures, an equally highly resolved, relentless and powerful counter-terrorism war that sent shock-waves world over- from the Torabora Hills of Kandahar, Afghanistan to the streets of Baghdad, Tikrit and Mosul in Iraq, through to Abbottabbad neighboring Pakistan; from the streets of London, Madrid and Bali which came under terror attacks; to the meandering footpaths of Lamu and Mombasa in Kenya, where Al-Qaeda are suspected to have pitched tent; to the bullet-riddled ruins of Mogadishu, Ras Kamboni and Kismayu in war-torn Somalia, from where the dreaded Al-Qaeda affiliated Al-Shabbab group is based; to the vast plains of Kaduna and Jos in Northern Nigeria, strongholds of the infamous Boko Haram. Yet a decade down the line, heavy casualties have

been recorded on both sides of the terrorism-counter-terrorism divide, and certainly more questions than answers over the toll these events and their concomitant ramifications have had on the very sanctity, ethos and general state of human life.<sup>56</sup>

At this juncture, I delve into discussion on the regional dynamics of terrorism over this time. For the most part, international terrorism has been increasingly organized and spread its tentacles across the globe. However, some parts of the globe have experienced more terror attacks than others. Nonetheless, this may not mean that the Americas are much less a target of terrorism when compared to other regions, say Africa or Europe. The reason for these differences may be that some parts are better organized in their counter-terrorism than others. It may also be that a spatial hypothesis may be plausible at this level—that is, the “further a state is from the Middle East which is the global epicenters of global terrorism, the less likely it will be attacked.” Nonetheless, the Americas have experienced fewer attacks than other parts of the world, yet the few that occurred have been among the worst. Apart from the Oklahoma bombing of April 1995<sup>56</sup> and the Boston Bombings of April 2013, the September 11 2001 attack was the most devastating and the worst in the region. Since, then such attacks have remained rare and far apart— but the threat is remains real— hence continued and heightened counter-terrorism activity. It may be true that since 2011, no nation has invested in counter-terrorism on the world more than the United States both in terms of men, money and materials.

Across in Europe, terrorism is real and so have counterterrorism efforts remained active. Many decades earlier in 1972, the Munich Massacre which targeted Israeli nationals who were attending the Olympics brought the realization that such events could replay themselves in future. Yet terror tactics changed in form and content from airplane hijackings and hostage takings of the 1970s, to the suicide bombings and bomb-plantings of the 2000s. Nonetheless, at times events that were very similar to the

1970s have at times been replayed once in a while, catching security agencies and related authorities off-guard. The September 1<sup>st</sup> 2004 attack in Madrid Spain was an attack on Spain’s rail transport system and over 191 people died. A similar attack took place in London a year later in July 7<sup>th</sup> 2005. One outstanding feature of Europe’s terrorism is that for many years it was localized and internally directed. For close to three decades, for instance, Northern Ireland came under terror attacks directed from the Irish Republican Army. It is noteworthy that a localized group known as ETA that claimed responsibility for the Madrid bombings (Crenshaw 2007, 140).

More recently however, more and more citizens within the EU and even Scandinavian countries are directly getting involved in terror activities particularly in the Middle East, Asia and even Africa. More recently for instance, following the release of a video showing a suspected Briton Jihadist, based in Eastern Syria beheading a US journalist, the UK Government announced plans to have even stringent measures in the war on terror. On this particular matter, a UK Government Official announced that:

“...we know that far too many British citizens have traveled to Iraq and traveled Syria to take part in extremism and violence and what we must do is redouble all our efforts to stop people going, to take away the passports of those contemplating travel, to arrest and prosecute those that take part in this extremist and violence, to take extremist material off the internet and to do everything we can to keep our people safe and that is what this government will do”<sup>56</sup>

True enough, many British citizens including women did travel to countries such as Syria to fight on either side of the divide. Some are pro-establishment while others form the antithesis.

On the other hand, the theatre of terrorism and counterterrorism in the Middle East is complex and multifaceted. One cross-cutting under-current is the Arab-Israeli conflict. Right from

the 1948 conflict between the newly established state of Israel on one hand and her neighbors in the region; through to the Six Day War of 1967 as well as the 1973 Yom Kippur War; through to the Israeli Invasion of Lebanon in 1983, to the *Intifada* attacks of the 1990s, various theatres of terror have been played-out especially around the activities of groups such as Fatah, Hamas, the Palestinian Islamic Jihad (PIJ) and Hezbollah. The Munich Attack in 1972 was directed at Israelis, and so were the 1972 siege<sup>56</sup> on Entebbe Uganda and the 1980 attack on the Norfolk in Nairobi. Nonetheless, more suicide attacks began to be carried out on Israel soil in the 2000s. In March 2002, suicide attacks in Israel killed at least 62 people in two separate but sequential attacks that targeted restaurants and other public facilities in cities such as Tel-Aviv, Ntenya and Haifa. Nonetheless, the Middle-East terrorism is not centered on the Arab-Israeli conflict alone. Various other theatres of anti-Western and/or anti-American directed terrorism activity took place in various places around the Middle-East and by extension North Africa. For instance, terror attacks were orchestrated in Riyadh Saudi Arabia in May 12<sup>th</sup> 2003.

It is noteworthy that since the US-led invasion in Iraq in 2003 and the subsequent overthrow of the Saddam Hussein regime, suicide attacks increased exponentially since then and have persisted to present in Iraq. This was especially so as it emerged that the regime changes that ensued were either anti-new establishment (and by extension, anti-US and/or anti-Western) or pro-new establishment (and by extension pro-US and/or pro-US backed new regimes) further taking a religious dimension- Shiite versus Shiite and so on.<sup>56</sup> Since then, abductions, beheadings, shootings, suicide attacks have continued in states such as Iran, Iraq, Syria and Yemen. For a long time, the leading group behind the anti-US Islamic fundamentalist campaign was Al-Qaeda. Over this period however, various other groups joined the Al-Qaeda side and broadened the scope of what in now a wider Global Islamic Jihad Movement (GIJM).

The Arab Spring factor of 2010 through 2011 and its ripple effects across the Middle-East saw the ouster of Western-leaning and otherwise anti-Western regimes alike. It may be recalled that Col. Gaddafi for instance at some point blamed the growing rebellion in his country on Al-Qaeda. In Egypt, regime change was seen to be driven by the Muslim Brotherhood, which was Mubarak but not in the strict fundamentalist anti-Western sense. It must be stressed that two faces of terrorism have emerged here. The first is one that is *internally directed* as groups such as the Muslim Brotherhood and Islamic Republic of Iran and Syria (ISIS) seeks some form of regime takeover- with the ultimate aim being to establish Islamic states. The second is the *externally driven*, where certain groups are part of a global movement to fight against all forms of western influence in the world. For the most part, current statistics reveal that most of the world's terrorism is concentrated in about 10 countries most of which are in the Middle East Africa and South Asia. A Report published by the Institute for Economic and Peace (IEP) in November 2014 for instance revealed that Iraq, Afghanistan and Pakistan accounted for up to 65.8% of all deaths by terrorism in 2013.<sup>56</sup> It is also possible that there is a high degree of ideological and operational confluence on the part of both kinds- such that cross-pollination of ideas and joining of operational and material efforts cannot be ruled-out, across time and across regions.

Asia, particularly south, east and central Asia has its own unique setting of terrorism and counterterrorism. Nonetheless, various theatres of terrorism in parts of Asia have from time to time been closely associated with the happenings in the Middle-East. For these reasons, it should come as no surprise that major international terrorism networks such as Al-Qaeda became quite active in parts of Asia after September 11. In October 2012, an Al-Qaeda linked group successfully orchestrated the terror attack on Bali, Indonesia in which at least 212 people dies, most of them being Australians. A similar attack took place in Moscow on October 2002 when militants besieged a public facility and

opened fire at innocent civilians. In the process of subduing the terrorists, Russian troops used poisonous gas,<sup>56</sup> a counter-terrorism operation that turned tragic, leaving at least 179 people dead. A similar attack was orchestrated in Beslan, North Ossetia, Russia between 1<sup>st</sup> and 3<sup>rd</sup> of September 2004, when Islamist gunmen took over 1,000 hostages in a sports facility. In that attack, over 330 people, many of them children died after the Islamist gunmen set-off explosives. It is noteworthy that the form of terror that has been carried out in parts of Russia is internally directed especially in the context of parts of Russia that seek secession or separation of sorts- though in some cases, it has been shrouded in religious overtones, where Islamic militants have been involved.

It is noteworthy that the two individuals suspected for having been behind the Boston Bombings had links with Islamic fundamentalist groups in Russia. That said Asia is a vast continent where other states in the region particularly Pakistan (South Asia), and Afghanistan (Central Asia) and to some extent, India. The Allied Operation in Afghanistan (Operation Enduring Freedom), which begun in early October 2001 took the war against Al-Qaeda to its stronghold operational bases in the border areas between Afghanistan and Pakistan. Throughout this period, various terror attacks of the suicide kind continued to be waged on western targets both in Afghanistan and Pakistan. Though a new Western-leaning government was formed in Afghanistan, it continued to be under serious challenge from the Taliban, Al-Qaeda and other related groups. Thousands of innocent non-combatants including women and children have died both in the hands of terror groups and anti-terror security operations alike. Most recently, the employment of drone attacks by Allied Forces in the region have raised human rights concerns.

Finally, Africa has been a major focal point as far as the activities of international terror groups is concerned. According to the Global Terrorism Index Report for 2014, out of a total of 162 states, the top-20 most affected

by terrorism, 6 are in Africa namely Nigeria, Somalia, Kenya, Egypt, Libya, the Democratic Republic of the Congo (DRC), Sudan and the Republic of South Sudan.<sup>56</sup> For many years however, terror attacks in the African region were few and far between for most of the 1980s and 1990s. In fact, apart from the twin attacks on August 7<sup>th</sup> 1998 on the US Embassies and Dar es Salaam (orchestrated by Al-Qaeda, leaving over 250 dead), more attacks took place after 2000. The Africa terror map is one that shows three main concentration areas- North Africa, East Africa and West Africa. Nonetheless, internally directed terrorism has been on for a long time, though perhaps not publicized due to its localized nature.

National liberation movements in Africa such as the Mau Mau in Kenya, the Algerian liberation movement, the armed wing of the African National Congress (ANC) in South Africa, South Western Africa Peoples Organization (SWAPO) in Namibia and the Zimbabwe African National Union, Patriotic Front (ZANU-PF) in Zimbabwe (then, Southern Rhodesia) were all classified at one time or another as terrorist groups. Also, the decades of the 1960s-1990s, were characterized by numerous civil wars on the African scene- Zaire (now DRC) Nigeria, Mali, Ethiopia, Uganda, Sudan, Angola, Mozambique, Rwanda and Burundi just to mention but a few. These conflicts were characterized by various acts of terror against civilian populations. Nonetheless, the kind of terror that characterized the post-2000 period in Africa is one that has a strong Islamic fundamentalist ideology and particularly directed towards the US and her allies in the region. Nonetheless, the current settings of terrorism seem to be centered on two major Al-Qaeda-related extremist groups; Al-Shabaab in Somalia and Boko Haram in Nigeria. Both groups have been quite active and increasingly working in cahoots with other militant groups' cells that are dotted all over the northern region especially in Libya, Mali, Algeria, Morocco and Egypt (and by extension Yemen, Oman, Comoros and Afghanistan).

## Terrorism, Counter-Terrorism and Human Rights Debate: A Critical Analysis

In mid-August 2014, Human Rights Watch published a Report in which Kenya's mainly Western-funded Anti-Terror Police Unit (the ATPU) was cited as having directly or indirectly abated or orchestrated extra-judicial killings and forced disappearances in the War Against Terror (WAT). The organization went further to recommend that Kenya's bosom allies in the West led by the United States and Great Britain should sever counter-terrorism funding in a bid to curb such human rights abuses not only in Kenya but in the wider Eastern Africa region.<sup>56</sup> Though such Reports do not come as "breaking news" to governments- western or otherwise, which have their own "versions of the story," they point to an important development in the human rights agenda: that the counter-terrorism effort is emerging as the new-found platform in the human rights debate globally.

No doubt, like the pirate of old, the terrorist can pass to be *hostis humani generis* and the worst any government can do is sit back and allow the innocent (immediate and/or proxy targets of terror) perish without protection and/or recourse (Schorlemer, 2003, 269). But the politics of global counter-terrorism and human rights do present a complex set of challenges. The greatest challenge for governments is how best to handle what appears to be an ever changing, every dynamic and mostly "invisible" enemy who brutalizes the innocent to gain power, control and influence. Governments are equally different as far as how, when and for whom they exercise their mandates. While the world's leading democracies can be held responsible for their actions due to the impact of domestic normative and institutional checks that govern the relationship between policymakers and the electorates they represent; in other political systems, leaders can do almost anything and get away with it provided they please the small political-military and economic elite networks that sustain their stay in power (Bueno De Mesquita et al 2003, 41).

Ordinary citizens hence (or subjects) may not have much control over the governments that protect them let alone deal with the threats that international terrorism poses and the aberrations that governments may commit in the name of responding to it. Counterterrorism policies vary too. Some states take a purely *minimalist* and by extension *confrontational* approach which is simply to take the war to the terrorists and subdue them. On the other hand, other governments take a more *maximalist* approach that takes on both the direct-preemptive strategy of the former but also recognize that that terrorism takes place in a broader and potentially complex human environment- hence the *human agent approach* that oscillates with a careful balance of long-term *prevention* and *pursuit* strategies as well the short term *protective* and *responsive* strategies (Dongen 2010, 234-235).

An interesting pattern of issue then follows. International terror groups' ideologies that can easily be accessed by citizens of the world's leading democracies by virtue of the wide range of human rights protections and basic freedoms they enjoy in addition to a conducive environment for the enjoyment and advancement of a whole range of social, economic and cultural rights- a state of affairs that has made it easy for citizens from as far as the United Kingdom, Germany, France, Sweden, the United States, Canada and Australia to mention but a few, to raise money, fund, access information and even travel back and forth to the battle-fields in Iraq, Iran, Yemen, Syria, Afghanistan, Libya, Somalia and Lebanon to support a given Jihadist and or fundamentalist group or another.<sup>56</sup>

At the same time, with support of such support and networks, the very human rights mantle that is espoused in the world's leading democracies is increasingly being "misused" to fund fundamentalist and murderous terror schemes elsewhere around the world especially in the least developed countries where many years of a poor human rights background in the structural sense; through misrule, poor governance and socio-economic marginalization provides a safe havens



and ungovernable virtual spaces for recruitment and radicalization of populations, who then become conduits for terrorism, at times for the money and basic survival and not necessarily for any deep-seated ideological reason. It cannot however that both governments and international terrorist organizations have at one time or another supported insurgents and at times, the insurgents seem to have a “life of their own- a unique agency latitude” that at times has seen them switch allegiance on either side depending on which best suits their interests (Byman 2006, 85-86).

At the same time, responsible democratic governments want to please and protect their citizens from the dangers that global terror poses- after all, that is the only way they can remain in public office. Their counter-terrorism actions should at the least be seen to be (and believably so) in conformity with the democratic culture and strong institutions that govern the democracy and freedoms their societies enjoy. Yet they need to keep the “war” away from their shores and they must be involved in order to protect their own. At times the “leeway” their more authoritarian counterparts enjoy works best for them (that is the Western leading democracies) in the gathering, analyzing and dissemination of information for purposes of pre-empting and thwarting terror threats before they can get to the actionable-executable levels. But sometimes, once in a while, “accidents” and/or “unavoidable circumstances” can present themselves (Foot 2007, 511).

The Boston Marathon Attacks of April 2013 remind the US of the need for eternal vigilance and once again reminded the American people of the realities of global terrorism and what it is capable of doing. Though Russian authorities had warned US security authorities of the activities of the Tsarnaev brothers and their links to anti-American terror cells based in Kyrgyzstan, the US government had to tread carefully in lieu of the fact that the brothers were operating on US soil and enjoying full Constitutional protection and the rights and responsibilities it demands not only from ordinary American citizens, but also to

the government that protects them. Nonetheless, when ‘push came to shove,’ it was time to act fast and firmly- once it was clear to the authorities that Brothers were the prime suspects, a manhunt was mounted all over the State of Boston and when they suspects posed a clear, present and imminent danger by fatally shooting and killing a police officer, they were met with an equal measure of force that left one dead and the other captured and totally subdued and subsequently hospitalized and formally charged- following a dramatic hunt-down that caught global attention. US authorities had to do what they had to do to safeguard the lives of their citizens and remained prepared to answer questions openly, transparently and clearly to justify their action as far as the terror attack was concerned.

Yet all countries are not the same. Much fewer countries enjoy the political, financial and military clout that the U.S. or Great Britain possess; and though many support the counter-terrorism cause, they may be exposed to more frequent “mistakes, accidents and sheer blunders” as far as effectively handling global terrorism is concerned. But their governments somewhat enjoy much leeway and at times may “play dirty” with the covert support of their western counterparts who may not enjoy such privileges but can provide accurate intelligence and actionable facts about who was behind the Westgate, Jos, Tripoli or Mogadishu attacks. In the final analysis, human rights advancements in the world’s leading democracies are indirectly “aiding” global terror, while poor institutionalization of the same in the less developed partially-democratic and more authoritarian political systems is partly aiding the counterterrorism effort but also getting away with a lot as far as human rights is concerned- as state of affairs that may prove counter-productive (Hafner-Burton and Shapiro 2010, 416).

While there can be different strands of terror, so can there be different shades of counter-terrorism. While terror can be the *modus operandi* of certain groups that aim to capture power within a given state, (Al-Shabaab, LRA, Boko Haram) others claim to deeper and broader ideologically driven

missions such as the total liberation of Palestine or stopping and defeating the spread of US-led neoliberalism and hegemony around the world. Similarly, governments may have different motivations in their counter-terrorism agendas. More accountable mature democracies must deliver the promises they make to the citizens- they must win. The less accountable governments may genuinely fight terror but at times corruption and poor management of state affairs make them and the people they ought to protect even more vulnerable. In yet other circumstances, such governments may politicize the war on terror and brand their political opponents “the terrorists” and ostensibly hide behind the veil of countering global terror to chock their opponents, circumvent constitutions and enhance their grip of power through illegitimate and unpopular means.<sup>56</sup> Subsequently, governments that are generally viewed as “rogue states” may at times prove to be most instrumental on taming international terrorism in the eyes of their more democratized counterparts (Foot 2005, 294-295). Hence the *use* on one hand and *abuse* of the instruments of counterterrorism on the other, are separated by a thin and often blurred line (Guiora, 2012, 760).

The more politically and econometrically developed democracies have had and continue to grapple with these challenges too. The US has had its own share of these challenges. The immediate post 9/11 period for instance called for extraordinary measures- a state of affairs that saw the not only Congress but also supporter give the Bush Administration a blank check to deliver justice and bring Al-Qaeda and its leaders to book for their deeds (Fitzpatrick 2003, 250). Yet the challenges of Abu-Ghraib, Guantanamo and alleged CIA extra-judicial machinations outside US soil in achieving this mission did call for some caveats and at times “a return to the drawing” formula since (Twiss 2007). Some scholars have alluded to the fact that post-9/11 realities in the terrorism-counterterrorism divide put the world in a perpetual “state of emergency” that to date had never really formally ended. In this context, questions around process of extraordinary

rendition have been posed in various human rights circles, especially where some of the cases remain shrouded in inter-governmental security agency secrecy- hence less and/or no communication with the immediate families or friends of the said suspects (Weissbrodt and Bergquist 2006, 159). Governments hold-on to such practices dearly. It is noteworthy that such processes in some cases appear to have borne fruit, especially when governments reveal that information obtained from a facility such as Guantanamo was crucial to the tracking and capture of Osama Bin Laden, for instance.

Important grey areas will persist and it need not be taken for granted that governments have facts; and for the most part, some of these “facts” cannot become public knowledge overnight even with the loudest protests from well-meaning Congressmen or powerful local and international human rights movements. The very claim from a responsible government that “*we cannot go into details as this may prejudice our efforts and expose great danger to state survival*” ....and so on and so forth; is as times as genuine as it can get. Of course in others especially where citizenship is a privilege and not a constitutionally protected right, such claims are no more than hogwash! This also brings in the question of whether states that are both economically underperforming and politically underdeveloped (in the context of democratization) can effectively combat terrorism without abrogating their human rights obligations.

These debates further raise a number of pertinent questions over whether human rights are *unlimited* and how far they can be claimed as well as protected. How far can governments go as far as counterterrorism is concerned? (Gearty 2005, 19). It has been argue that the physical act of terror is only a manifestation of an underlying form of structural conflict taking place and confronting these questions squarely is the first key step in the process of addressing the terrorism menace. Hence, there are several things that may inform the terrorist agent. One is a deep ideological conviction that what they do is rationale and fully justified. Hence,

something has to be done to change these ways of thinking. Second is the idea that the agent and their cats may be doing it for material gain as a result of wanton suffering and poverty in the hands of other groups of people and/or governments. It would not be unimaginable to “make sense” of a situation here people who commit acts of suicide terrorism are doing it because *“even though we die...we believe that terrorizing the enemy will free our people from the yoke of unfair marginalization, domination and degradation.”* Yet others may not have deep-seated ideological convictions or have been the direct victims of the now end target of terror, but rather, they are in it to ‘make ends meet.’

It has been established that terror cells at times thrive and survive among poor populations where youths can easily be hired to plant bombs in buildings or in market places as well as get engaged in active asymmetric warfare simply for the sake of monetary gain and not deep-seated ideological and/or political conviction held by the top-notch sponsors of such activities. In this way, broader issues to do with human rights of the Third Generation kind come into play. As such, poverty and destitution, and other related society-wide maladies including unemployment and illiteracy in most parts of the world today are important issues to consider in informing ways to turn the counterterrorism agenda into a useful platform of confluence with the advancement of human rights. In this direction, governments need to be most cautious about their counterterrorism strategies. Some research work has shown that brutal force more often than not does not have long-term effect in stemming terror. At times the indiscriminate processes employed could well be the very end-objective some terror groups are seeking- provoking government repression in thereby unconsciously radicalizing sections of the population that the terror groups claim to be protecting and directing such radicalization to the government (Bueno De Mesquita and Dickson 2007, 364).

## Conclusion

This paper set out to examine the place of the terrorism-counterterrorism nexus in the human rights discourse. For the most part, this paper contends that the topic in question is quite complex. Each time an act of terror is committed, human rights suffers. In the same vein, countering terrorism can by its very nature be a form of protecting and/or preventing further human right violations. Yet the interface between the two- terrorism and counterterrorism- has at times been at the centre of controversy as far as the human rights agenda is concerned. This paper proffers several pertinent policy recommendations in the direction of institutionalization of human rights as far as the terrorism-counterterrorism nexus is concerned. First, states need to agree on a what terror means both to the terrorist and the end-target so as to arrive at internationally agreed means of combining the vice without abusing human rights. At it is now, a lot of controversy surround these issues. Secondly, governments should strive as much as possible to ensure that their counterterrorism processes remain within the confines of clearly spelt-out legal bounds in order to be able to efficiently and justly evaluate and improve on such processes (Thakur 2005, 283).

Finally the structural sources of conflict and social inequality that may be partly responsible for the emergence and proliferation of the current wave of international terrorism need to be addressed both within and among states. This would ensure that terrorism becomes a less attractive means of solving political, ideological and/or socio-cultural differences among peoples. While counterterrorism may appear to be an “escape route” for irresponsible governments to get away with anything (the use of two wrongs to make a right); in the actual sense, the continued reaction to such “irresponsible acts,” when they do occur- is slowly turning into a powerful agenda for holding them accountable for their actions as far as human rights is concerned- hence somewhat *indirectly* serving the noble purpose of institutionalizing human rights around the globe, while protecting humanity from a common enemy- terrorists and their sympathizers.

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# **Burundi on the Precipice? Analysis of Current Conflict Dynamics**

*Joseph Kioi Mbugua*

## **Abstract**

This study has traced the genesis of the current election based political crisis in Burundi. The article attempts to locate the conflict within the prism of state fragility occasioned by political, economic and social faultlines. The paper argues that past power dynamics captured in the Arusha agreement and the new constitution will determine the future of peace and stability under the majority hegemony. The ongoing political, economic and social change should be wisely nurtured to push the country into a new paradigm of civic nationhood, where the state guarantees human rights protection and security for all.

## **Introduction**

The current conflict in Burundi seems to tragically follow a well beaten path, where one party reneges on a peace agreement or social contract and takes the country back to the slippery road of violent conflict.

There are many drivers of the current conflict which have been predicted in a number of studies, IPSTC, (2014). Given the experience of genocide in neighbouring Rwanda and DRC, Eastern Africa and other members of the international community cannot afford to wait until another blood bath erupts on its door steps.

Burundi is a small country located at the Democratic Republic of Congo (DRC), Rwanda and Tanzania and occupies an area of about 27 000 Sq.Km. Burundi has a population of about 10 million and a population of growth rate of 3.2 and density of 354 per Sq.Km, (UN, 2012).

Burundi attained its independence from Belgium in 1962 and became a monarchy under a Tutsi King. Though the conflict has been seen from ethnic perspectives, behind that smokescreen is struggle for resources in a highly populated small country with scarce resources, (Ndukumana, 2005). Burundi's population is around 8.6 million, Hutu making up 85%, Tutsi, 14% and 1% Twa, (USAID, 2009).

As early as 1965, Burundi Prime Minister, was assassinated and the monarchy was abolished the following year when Captain Michel Micombero dethroned King Ntare V, (Edgar, 1997). Since then there have been coups and counter coups, assassination of senior political leaders and mass killing. Conflicts continued in the country until the Nyerere and Mandela led negotiations in the 1990s and beyond. Conflicts in Both Rwanda and Burundi have been spectacular in terms of their dichotomies and similarity. At any one time since independence, when Burundi is ruled by the Tutsi, Rwanda is ruled by the Hutu and vice versa. In 1994, the plane carrying both Hutu presidents of Rwanda Juvenal Habyarimana and Cyprien Ntaryamira crashed in Kigali igniting the worst genocide of our time in Africa.

During the long conflict, it is estimated that Burundi lost about 400 000 lives and more than 800 000 people were forced out of the country and many more were internally displaced, (Wolpe, 2011). There are a number of measures that can be taken to progressively return the country to a path of peacebuilding. This study surveys and discusses the different options out of the current quagmire.

Burundi is still a fragile and nascent democracy with weak governance institutions. Like many



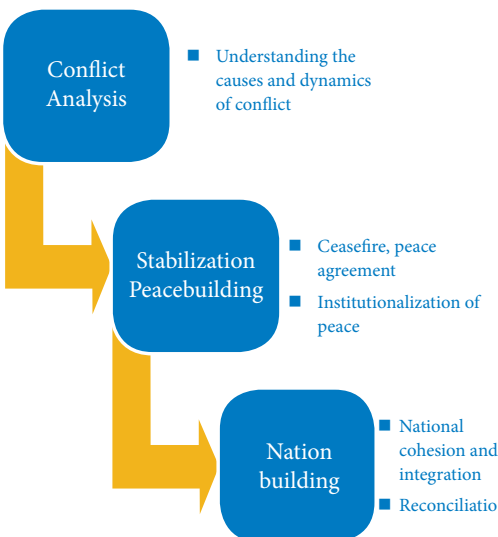
other African countries, the political leadership has not yet found a sustainable source of political legitimacy beyond ethnic cleavage and patrimony.

Burundi has an acknowledged ethnic parity in the military and other government organs. Like South Sudan a clear line between the freedom fighters, former Burundian Military, Forces Armees Burundaises (FAB) and the government and political parties has not yet been drawn.

The current delicate peace is held by the Arusha Agreement and the current constitution. The alleged intention of the President, Pierre Nkurunziza to extend his rule beyond the spirit of the latter two documents, is seen as a significant threat to peace and stability in the country and by extension Eastern Africa.

## The Goal of the Study

To analyse the dynamics of conflict in Burundi that shed light on the current situation



## Conceptual Framework

*Source: Adapted from 'Concepts and Dilemmas of State building in Fragile Situations, OECD, 2008, Journal on Development, Vol. 9. No. 3*

This concept means that if proper conflict analysis in a given situation, it can inform stabilization and peace building strategies, therefore creating a suitable environment for addressing long term nation building needs.

## Theoretical Basis

### States Fragility Theory

Fragility is a composite measure of all states performance producing a ranking of the worst and best cases. This ranking may also be compared over time to show improvement or regressions. Fragility is a relative situation that change depending on structural changes and processes that arise under specific conditions that evolve over time. The state of fragility is measured from global expectations of a well functioning sovereign state under international law, (Carment and Samy, 2011).

Different organizations have different rankings but they do not vary very much from each other such as Fragility States Index (FSI) and Global Peace Index (GPI). Ranking is based on a number of indicators that include authority, legitimacy and capacity. The approach also employs quantitative and qualitative analysis, (Carment and Samy, 2011). A country can get out fragility through implementation of multiple macro-economic and social changes, (Maier, 2010).

### Literature Review

The literature surveyed examines conceptions of state fragility and how they can inform conflict analysis and nation building in Burundi. The literature also examines publications that explain the causes and nature of the Burundian conflict in historical and current perspectives.

A country in a fragile situation has been described as one with certain attributes; weak institutions and governance systems, fundamental lack of leadership, lack of political will or capacity to deliver on key public services such as security, (OECD, 2010). Source of legitimacy is seen as lacking

what stable societies possess in terms of process and performance, (OECD, 2010). In fragile states the state is unable to project itself as the sole political authority, with resources, capacity and will to command willing followers. It may not control the whole of its territory and may have active rebel groups just across the borders. Providing human security is challenged by low tax base and weak economy, (USAID, 2012).

Some studies have assumed a linkage between security and development, especially with regard to fragile states, (Chitiyo, 2011; Hettne, 2010). It is also expected that a well functioning and legitimate state is a pre-requisite for establishing stability and social order, (OECD, 2010; USAID, 2012). Definition and understanding of the fragile states concept is promoted by Western institutions and scholars and requires adaptation to fit into the African vantage point. While diagnosis of what makes a state fragile is appropriate, prescription for its cure, may not correspond to the needs of the host state, (Olivier, 2012).

### **Genesis of the current conflict**

Burundi has experienced violence almost since independence in 1962. In 1961, Prime Minister, Prince Louis Rwagasore (Ganwa) was assassinated two weeks after taking office. In January 1965 Prime Minister, Pierre Ngendandumwe (Hutu) was assassinated one week after his second tenure in office. In September 1965, his successor, Joseph Bamina (Hutu) was executed. In 1966 Leopold Bihumugani (Tutsi) was arrested. The situation stabilised when Michel Mocombero (Tutsi) took office as president in 1966 and went to rule for a decade until he was overthrown in 1976. Jean Baptisted Bagaza took office in 1976 and ruled until 1987 when he was overthrown by Pierre Buyoya who ruled from 1987 to 1993 when he lost elections to a popularly elected Hutu leader, Melchior Ndadaye, (Edgar, 1997). Historically the minority Tutsi have had political and economic advantages, (Wolpe, 2011).

Buyoya came back through a coup and under the Arusha negotiation and ruled from 1996 to 2003. On May 1, 2003, Pierre Buyoya ceded power to Hutu leader, Domitien Ndayizeye as agreed during the Arusha negotiation. This unprecedented act and gesture from the Tutsi leadership underpins their current discomfort with Pierre Nkurunziza's intention to run for a third term.

The military in post colonial Burundi was formed as part and parcel of the ruling political elites and it became the guarantor and determinant of political authority rather than a civilian controlled subordinate authority. The military was constructed as a source of employment and political power especially during the reign of Micombero (1966-76). Therefore more resources were diverted to security as opposed to education, health and infrastructure, (Ndikumana, 2005).

During conflict, the economy becomes the first casualty, therefore there was a great need to revitalize agriculture which was the mainstay of the Burundian economy, (48%) of GDP, (93%) of employment and over 90% of its exports, (Ndikumana, 2005). Burundi has a small private sector due to reliance on subsistence based agriculture. The state as the major distributor of economic resources therefore becomes a basis for contestation, (USAID, 2009). Burundi has an extreme population density coupled with land shortage, unemployment, youth bulge and poverty.

The government in Burundi was a major determinant in preferring access to economic benefits through parastatals that controlled even some sectors that could be handled by the private sector, (Ndikumana, 2005). Given patrimonial based access to employment in such authorities and corruption, those who did not have close access to power felt extremely marginalized.

Burundi's conflict cannot be currently classified purely on ethnic lines; a significant development given its tumultuous past. There are still notable differences among the political class. Governance and security sector reforms have not progressed

as envisioned, (IPSTC, 2014). The elections of 2010 were boycotted by opposition parties and generally regarded as not free and fair. This experience has informed some sections' of the Burundian society's political disaffection with the controversy ridden forthcoming 2015 elections.

Like some other post conflict ruling parties such as SPLM in South Sudan, National Council for the Defense of Democracy-Forces for Defense of Democracy, (CNDD-FDD), has not yet transformed into a democratic political party. The leadership often results to intimidation of its opponents, harassing opposition political parties and torturing its political enemies, (Wolpe, 2011). The opposition parties also remain disorganized and no less undemocratic than the ruling party, though conflicts revolve more along intra-Hutu political rivalries than Hutu/Tutsi divisions, (Wolpe, 2011).

The recent civil unrest and attempted coup was occasioned by the president's insistence on vying for a third term based on technical interpretation of the law. Given that he was first elected through parliament in 2005 and not through universal suffrage, he argues that he is still eligible to serve another term. His detractors see this as a pretext to serve for another term and violate the current constitution, (Guardian, 13 May 2015). Given lack of free and fair elections atmosphere and lack of independent judiciary the opposition does not have faith in the electoral process and cannot seek redress in the courts. Therefore civil protests become a preferred strategy. Such actions however cannot be sustained for long as the crowd becomes weary, repression increases and divide and rule tactics are employed. The ensuing underground rebellion risks division in the military; an institution that is still the custodian of national peace and security in the country.

### Security dilemma

In many divided societies, security enhancing strategies are employed that often send fears and insecurity to other groups. The security guarantees provided by the Arusha agreement, where the majority Hutus accepted significant concessions to

the Tutsi, where they got power out of proportion to their numbers, was a recognition of the price to be paid for the end of Tutsi hegemony, end of civil war and return to a democratically legitimate governance dispensation, (Wolpe, 2011).

Previous massacres occurred with impunity and therefore state sponsored or rebels killing has no moral retribution. This is exacerbated by the culture of inter-communal fears and insecurity. Tutsi fear of extermination/genocide, Hutu fear of massacre and ethnic exclusion.

Both Hutu and Tutsi are fragmented by intra/clan, regional and personal leadership style cleavages. These intra-group conflicts have sometimes exacerbated the conflict between Hutu/Tutsi by blaming each other on their positions at the negotiation table, (Wolpe, 2011).

Burundi has not yet established a Truth and Reconciliation Commission or Special Tribunal to prosecute war crimes, therefore impunity for murder continues (Wolpe, 2011).

### The Arusha Agreement

On August 28, 2000, the Arusha Peace Accord was signed between the ruling party and several armed opposition groups, (most of the 19 delegations present, though CNDD-FDD and PALIPEHUTU-FNL) were not signatories. The negotiation was facilitated by then president of South Africa, Nelson Mandela. In 2002, FDD agreed to join the transitional government but FNL would remain outside until 2009.

This power sharing agreement has held the country together in a period of relative peace. Though this political atmosphere created opportunities for rebirth of a new country, there were still deep wounds that were not healed and unfortunately were not prioritized in the post conflict political dispensation.

The Arusha agreement did not solve the deep seated Burundian problems but only provided a suitable environment for their resolution. It was supposed to usher a new era in Burundian politics.

To inject legitimacy in its political leadership and to begin a long road of intra and inter-ethnic healing and reconciliation. It was a moment for post war economic and social reconstruction. Sadly some political leaders so the agreement as an end in itself and their position in leadership as a sign of military victory.

Symbolically, the resolution of the Burundian identity based conflict would be facilitated by a global icon of harmonious race relations; Nelson Mandela and one of the greatest champions of ethnic cohesion and integration in Africa, Julius Nyerere. In 2005, a new constitution was put in place and a new president, Pierre Nkurunziza, head of CNDD-FDD was elected by parliament as the first post-transition president of Burundi.

### **The Road to Political Stability**

The conflict transformation and nation building model for Burundi calls for recognition that self interest among groups can be more effectively advancing through collaborative and inclusive political processes. Building lasting peace in divided societies is a challenging process and therefore easy and short term solutions are inadequate, (USAID, 2012).

It will take long to correct the schisms of ethno-regional inequalities and therefore gradual, politically sensitive approaches assisted by the international community is required. There is a need for continued security sector reforms to create a professional military, police, intelligence, corrections, judiciary and parliamentary oversight mechanisms. Long term development projects to create ethno-regional balance is required. The rule of law rather than rule of fear should be gradually put in place.

The military and police have received training on security sector reform from USA. The program focused on their expected roles during the post conflict security consolidation in Burundi, (Wolpe, 2011). The integrated Burundian army has received professional training in Africa and beyond and has demonstrated its commitment

and professionalism in Darfur, Central Africa Republic, Somalia and other conflict zones, (Wilen, 2015). Participation of the Burundian army in regional Peace Support Operations (PSO), has not only increased their finances, prestige but also created a unifying desire for the army to be seen as a peace promoting institution. This situation however can be challenged by a dictatorial political elite.

The Burundian democratic transition cannot be implemented in a classical Western model, like Rwanda next door, it needs to guarantee majority participation/inclusion in the political and governance process while providing security guarantees to the minorities. Democracy means more than majority rule but also human rights guarantee for all. Rather than encourage competition on which the majority have an upper hand, sustainable peace in Burundi will be based on institutional mechanisms that encourages consensus and common ground, (Wolpe, 2011).

Support of neighbouring countries through the East African Community and International Conference of the Great Lakes Region (ICGLR) is necessary to ensure continued implementation of governance and security sector reforms. However the previous conflicts in eastern DRC, Rwanda and Uganda inform the political cautiousness currently displayed in the region.

### **Conclusions**

Given the current leadership is composed of former rebel leaders and former Burundian military leaders, the country is not out of the wood yet. The Burundian military has been the custodian of civil peace, therefore it is incumbent upon the political leadership to continue a path of building an apolitical and professional military.

Though president Nkurunziza may not have the posture of post apartheid Mandela presidency in South Africa or post colonial Nyerere leadership in Tanzania; the situation in the country calls for selfless leadership and commitment to a 'new Burundi', built from the ashes of past violence, in order to overcome major political, economic and social challenges facing the country today.

The international community can assist the country to develop institutions for managing credible elections. The sanctity of peace agreements and constitutional order is being severely tested in the country. Since regional leaders have democratic challenges of their own,

other international organizations and countries might a better chance of exerting pressure on the incumbent regime. The African Union (AU) and United Nations, (UN), USA, EU and France have lessons to learn from previous engagement in Burundi and the Great Lakes region.

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and facilitate implementation of peace agreements e.g. a ceasefire, truce etc. Peacekeeping was also aimed at supporting diplomatic efforts to reach long-term political settlements. Second generation peacekeeping operations are more complex and multidimensional where in addition to traditional military functions, police and civilian components are an integral part of the operation. The three components are tasked with different assignments that contributes towards sustainable settlement of the factors giving rise to conflict including the facilitation of the: protection of civilian populations; observance of Human Rights; security and management of refugee issues; disarmament, demobilization, and reintegration (DDR) programs; security sector reforms; election monitoring; conflict resolution efforts; restoration and practice of the Rule of Law among others. Second generation peacekeeping operations are also often referred to as Peace Support Operations (PSOs). (See Haidi Willmot and Scott Sheeran. 2014. 'the protection of Civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices'. *International Review of the Red Cross* (2013). 95 (891/892), 517-538. Multinational Operations and the law. Doi:10.1017/S1816383114000095)

See Willmot and Sheeran. 2014. *Op Cit*.

SCR 1270, 22 October 1999, para. 14 (ECOMOG stands for the Economic Community of West African States Monitoring Group).

The African peacekeeping missions with direct mandate for PoC include: MONUC (Democratic Republic of the Congo) protection of civilians language was added to the mandate in SC Res. 1291, 24 February 2000, operative para. 8; UNMIL (Liberia): SC Res. 1509, 19 September 2003, operative para. 3(j); UNOCI (Côte d'Ivoire): SC Res. 1528, 27 February 2004, operative para. 6(i); MINUSTAH (Haiti): SC Res. 1542, 30 April 2004, operative para. 7(I)(f); ONUB (Burundi): SC Res. 1545, 21 May 2004, operative para. 5; UNMIS (Sudan): SC Res. 1590, 24 March 2005, operative para. 16(i); UNIFIL (Lebanon) protection of civilians language was added to the mandate in SC Res. 1701, 11 August 2006, operative para. 12; UNAMID (Darfur) protection of civilians language was in the original mandate, SC Res. 1769, 31 July 2007, operative para. 15(a)(2); MINURCAT (Chad and Central African Republic) protection of civilians language was added to the mandate in SC Res. 1861, 14 January 2009, operative para. 7(a)(i); MONUSCO (Democratic Republic of the Congo) protection of civilians language was in the original mandate, SC Res. 1925, 28 May 2010, operative paras. 11 and 12(a); UNISFA (Abyei), SC Res. 1990, 27 June 2011, operative para. 3(d); UNMISS (South Sudan): SC Res. 1996, 8 July 2011, operative para. 3(b); MINUMSA (Mali): SC Res. 2100, 25 April 2013, operative para. 16(c)(i). (See Willmot and Sheeran. 2014. *Op Cit*).

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See: SC Res. 1270, 22 October 1999, operative para. 14. Retrieved February 17, 2015 from <http://users.ox.ac.uk/~some2297/jp/UN%20SC%20Res%201270%20%281999%29%20%28re%20Sierra%20Leone%29.pdf>

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Major General OB Akwa. The Diminishing Influence of the Nation-State: The African challenge and policy responses'. *African Defense/September 2014*. P. 7

African Union, Peace Support Operations Harmonized Doctrine (2006)

The Concept of R2P emerged in 2005 from recommendations by the UN International Commission on Intervention and State Sovereignty (ICISS) in view of the setbacks with the full realization of the PoC concept in violent conflicts experienced in the 1990s e.g. in Liberia, Somalia, Rwanda, Sierra Leone, Burundi, the DRC, Sudan among others. The R2P Concept applies in situations atrocious crimes e.g. genocide, crimes against humanity, war crimes, ethnic cleansing are systematic and planed as part of the war strategy. The R2P is conceived under three pillars: (1) The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk; (2) The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; and, (3) The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert (See Hanns Seidel Foundation (HSF), Konrad-Adenauer-Stiftung (KAS), Institute for Security Studies (ISS) and South African Institute of International Affairs (SAIIA). 2012. The Responsibility to Protect – From Evasive to Reluctant Action?: The Role of Global Middle Powers. Retrieved February 20, 2015 from <http://www.issafrica.org/uploads/Book2012R2P.pdf>)

Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, S/1999/1257, 16 December 1999, paras. 50-52

Current peace operations seek to address the root cause of conflict through peacebuilding activities, including electoral assistance, promotion of human rights, disarmament, demobilization and reintegration of combatants, security sector reform, rule of law among others.

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Draft DPKO/DFS Operational Concept on PoC. *Op Cit.*

Broadly defined, Small Arms those weapons designed for personal use, and light weapons are those designed for use by several persons serving as a crew (See 1997 'Report of the Panel of Governmental Experts on Small Arms'. *General and Complete Disarmament: The UN Secretary-General Note: A/52/298 (III)*, p. 11. New York: United Nations General Assembly. 27 August 1997. <http://www.un.org/Depts/ddar/Firstcom/SGreport52/a52298.html>).

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Binding protocols and conventions on SALW on the continent include: the SADC Protocol on The Control of Firearms, Ammunition and Other Related Materials, 2001; the Nairobi Protocol on the Control, Prevention and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States, 2004; the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunitions and Other Related Materials, 2006; and the Central Africa Convention for the Control of SALW, their Ammunition and Parts and Components that can be used for their Manufacture, Repair or Assembly, 2010 (African Union. Action Plan for The Implementation of the African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Retrieved July 25, 2014 from <http://www.peaceau.org/uploads/Action-Plan-En.Pdf>

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The PCRDP policy was adopted in Banjul, The Gambia, in July 2006 vide the Executive Council Decision (EX. CL/Dec.302 (ix) 25 June-2 July 2006 and provides for the development of AU operational guidance on DDR

See Para 58, p.17 APSA Roadmap 2011 quoted in African Union Disarmament, Demobilization and Reintegration Capacity Program (AU DDRCP). Project Document and Funding Proposal, October 2012 p. 14. Retrieved July 24, 2014 from <http://www.peaceau.org/uploads/audrcp-final-project-document.october-2012.signature.pdf>

See African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Retrieved July 30, 2014 from [www.peaceau.org/uploads/au-strategy-en.pdf](http://www.peaceau.org/uploads/au-strategy-en.pdf)

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Inter-Agency Standing Committee (IASC, 1999) (The definition was adopted by the ICRC and the IASC in 1999 following several workshops hosted by the ICRC and attended by representatives of both the human rights and humanitarian communities).

See: Darfur Peace Agreement – Final Security Arrangements. Retrived February 18, 2015 from <http://unamid.unmissions.org/Default.aspx?tabid=11740&language=en-US>

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The concept of Practical Disarmament can be traced to as far back as 1995, through the UN's "Supplement to an Agenda for Peace" that, for the first time, recognized and acknowledged the phenomenon of armed non-state actors; and, called for practical disarmament measures, different from the regulations and sanctions applicable to nation-states. The call by the UN was for comprehensive measures that would address the issue of illicit SALWs in post-conflict situations and in doing so, would create the necessary conditions for sustainable peace and development (see United Nations. (January 3, 1995). Supplement to an Agenda for Peace: Position paper of the Secretary General on the occasion of the 50<sup>th</sup> Anniversary of the UN. A/50/60/S/1995/1, par. 60).

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The UN defines combatants as persons who are members of a national army or an irregular military organization; or who are actively participating in military activities and hostilities; or who are involved in recruiting or training military personnel; or who holds a command or decision-making position within a national army or an armed organization; or who arrived in a host country carrying arms or in military uniform or as part of a military structure; or who having arrived in a host country as an ordinary civilian, thereafter assumes, or shows determination to assume, any of the above attributes. Ex-combatants are defined as persons who have assumed any of the responsibilities or carried out any of the activities mentioned in the definition of 'combatants', and have laid down or surrendered his/her arms with a view to entering a DDR process (See (See Operational Guide to the Integrated Disarmament,

Demobilization and Reintegration Standards, United Nations, 2010: 24, available at: <http://unddr.org/iddrs.aspx> and United Nations Disarmament, Demobilisation and Reintegration Resource Centre available at: <http://www.unddr.org/whatisddr.php>)

The UN Secretary General defines the rule of law to refer to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (See United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies*, report of the Secretary General, UN doc. S/2004/616 (23 August 2004), para 6).

Security Sector Reform (SSR) refers to a dynamic concept involving the design and implementation of a strategy for the management of security functions in a democratically accountable, efficient and effective manner to initiate and support reform of the national security infra- structure. The national security infrastructure includes appropriate national ministries, civil authorities, judicial systems, the armed forces, paramilitary forces, police, intelligence services, private-military companies (PMCs), correctional services and civil society (See United Nations, *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, 1 August 2006. [www.unddr.org](http://www.unddr.org)).

In 2007, a UN Secretary-General's Policy Committee agreed on a conceptual basis for peacebuilding to inform UN practice: "Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development". Peacebuilding strategies must be coherent and tailored to specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives" (See UN Peacebuilding: an Orientation. September 2010. [http://www.un.org/en/peacebuilding/pbso/pdf/peacebuilding\\_orientation.pdf](http://www.un.org/en/peacebuilding/pbso/pdf/peacebuilding_orientation.pdf))

See the example of the Security Council Resolution 1894 (2009) that expressed itself on the need for peacekeeping missions to develop indicators not only to measure the progress with the implementation of mandates but also on their protection strategies.

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