



Ghana needs a private space within which serious and sensitive issues bordering on issues of peace, security and conflicts can be discussed by relevant stakeholders premised on trust.

It is with this in mind that a pilot scheme was initiated in February 2007 through a monthly series of lectures, titled Reflections on Security Series. This has since its inception been hosted by the Research Department of the KAIPTC and supported by the Friedrich-Ebert-Stiftung. This book is a compilation of some of the lectures.

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REFLECTIONS ON SECURITY I

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# REFLECTIONS ON SECURITY I



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# Preface

Security remains an important issue for the socio-economic development of countries all over the world and Ghana is no exception. Indeed, the state has the primary responsibility for the security of all persons under its jurisdiction. With the introduction of private security firms in Ghana, the issue of protecting all persons in Ghana does not rest with the state alone. Thus, changing the roles and function of the security sector actors requires a platform which enables citizens and experts to freely discuss the new challenges facing Ghana's security architecture and the need to ensure democratic oversight and accountability of the security sector.

In this context, the object of state security should be citizen-centred, which does not threaten democracy and human rights or undermine social and economic development. Democratic governance requires a security sector which is responsible and responsive to the needs of the population, which means that security policy should not be threatening and more likely to provide all necessary security needs.

There is therefore the urgent need to reorient the thinking, attitudes and modus operandi of both government and state security agencies to meet citizens security needs.

This means ensuring open public discourse on certain security issues to ensure participatory security sector governance.

I would like to thank all those who have contributed to the publication, particularly the presenters and participants, Dr. Kwesi Aning and the staff of Research Department and my colleagues at Friedrich-Ebert-Stiftung. I hope that this publication will be widely used by researchers and policy makers in Ghana and beyond.

Daniela Kuzu

Resident Director



# About the Authors

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Having worked as former Chief of Staff and serving as Ghana's ambassador to the Republic of Liberia (1997-2001), Brigadier General (rtd) Francis Asiedu Agyemfra's keen interest in conflict prevention and management is unequalled. No wonder he played an active role in the creation of the Economic Community of West African States Ceasefire Monitoring Group (ECOMOG) during the civil war in Liberia in the 1990s. He was also actively involved in the peace processes in Liberia and Sierra Leone, contributing immensely towards the restoration of peace and civilian rule in these two countries.

Currently, General Agyemfra works as a security consultant; he is an international election observer and a senior fellow at the Institute of Economic Affairs (IEA), a non-governmental organisation in Accra, dedicated to the promotion of multi-party democracy, good governance and free market economy in Ghana and beyond

## Mr Colin Essamuah

Mr Colin Essamuah was educated at Mfantshipim School, Ghana, the University of Ghana and the Johns Hopkins University in the USA. After his education, he did his national service at the Department of History at the University of Ghana in the early 1980s and has since then been in private business. He has been writing rather infrequently on national political issues in the media, a thing he began in 1977. He lives in Accra.

## Mrs Gifty Anin-Botwe

Mrs Gifty Anin-Botwe is a retired Commissioner of Police who read Governance & Leadership for her Master's degree. She holds certificates in various subjects including Human Rights and Domestic Violence Management. She enlisted in the Ghana Police in 1976 as Assistant Superintendent of Police and worked in various capacities, notable amongst them are Deputy Commander in the Motor Traffic Unit, Accra Regional Command, Licensing and Examination of Drivers and Vehicles, the first Commander of Domestic Violence and Victims Support Unit, first female Commandant of the Police College, Director of Criminal Investigation Department, Director of Police Education, Director General of Human Resource, Training and Welfare.

Apart from working in the police force in Ghana, she has worked in Bosnia-Herzegovina and Newcastle upon Tyne. Having retired from police work, she works with Gifan Crime Consult, where she offers professional advice on crime-related issues.

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He is currently interested in researching into issues surrounding international crime and justice, International Human Rights and Humanitarian Law as well as peace and conflict studies, gender, security and strategic matters in Africa in particular and in the world in general. From the academic perspective, he studied and gained qualifications from countries such as Ghana, Austria, UK, Italy and Germany.

Mr Migyikra holds the following qualifications: MA in Peace and Conflict Studies, LLM in International Crime and Justice (International Criminal Law), LLM in International Human Rights

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He organised and delivered lectures and seminars in outlined areas above, to universities in Kenya (USIU), various Kenyan battalions in Sudan, other UN peacekeeping forces in UNMIS Sector II, UN Military and Police Observers, Sudanese Armed Forces and other organised armed groups, security forces, rule of law and administration of justice officers, civil society, traditional rulers etc.

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He is the co-editor of *New and Critical Security and Regionalism: Beyond the Nation State* (2003), editor of *Obligation of Empire: U.S. Grand Strategy for a New Century* (2004), and author of *South Africa and the Logic of Regional Cooperation* (Indiana University Press, 2005). He is editor-in-chief of the Taylor & Francis/Routledge journal *African Security*.

In 1993/94 he was a visiting scholar at Rand Afrikaans University (Johannesburg); in 2003 he was a visiting Fulbright Scholar at the Miklós Zrínyi National Defense University, Hungary; and in

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Dr Hentz's most recent book is the forthcoming, *The Nature of War in Africa* (Lynne Rienner Publishers). He is editor of the forthcoming, *The African Security Handbook* (Taylor & Francis/Routledge Press).



# Democracy, Political Parties and Stability in Africa

*By Brigadier General Francis A. Agyemfra (Rtd)*

## Introduction and Definition

### Democracy

The term, democracy, is used to denote a political system that has three main characteristics:

- a. A meaningful and extensive political competition among individuals and organised groups, such as political parties and interest groups, for all important governmental powers, for which competition should occur at regular intervals, and exclude the use of force;
- b. The existence of an inclusive level of political participation in the selection of leaders and policies through regular free and fair elections in such a way that no major group - social, ethnic, regional, religious - is excluded;
- c. The existence of a level of civil and political liberties sufficient to ensure the integrity of meaningful competition and political participation, where every person enjoys certain basic rights including the right to express

how he or she is governed, the freedom to criticise the government, the freedom to express one's views and to associate with others, protection from arbitrary arrest; and the freedom to practise one's religion as well as the right to property ownership.

Broadly, it means popular control over elected rulers, equal rights and liberties, political freedom and freedom from want, the rule of law, justice and security.

## Political Parties

Political parties are the heart and soul of any democracy. Political parties perform key roles in the formation of governments, grooming leaders at national and sub-national levels and holding government accountable among others. They allow for choice in the political arena and are the highest expression of the freedom of association.

The term *multi-party democracy* presupposes the existence of many political parties. Political parties are the bedrock of multi-partyism. Weak political parties lead to weak multi-partyism. Strong parties are the foundation of viable multi-party democracies and political stability.

## Stability

A stable nation connotes a nation that assures its people food, clothing, shelter, education, good health, employment and other basic necessities of life as well as ensuring that its people



enjoy peaceful, fulfilling and rewarding lives. Such a state of affairs is achieved only if a nation has a well-established system of governance with accepted and time-tested modalities and mechanisms for:

- a. Electing, installing and replacing governments;
- b. Upholding fundamental human rights;
- c. A process of dynamic, economic and social development;
- d. Institutional structures for protecting its citizenry and sovereignty;
- e. Good neighbourly policies.

The elements just mentioned constitute the bastions of democracy, the existence or otherwise of which are in themselves indicators of the level of national security and stability. Once the existence or prevalence of any of these elements is disturbed or threatened, a situation of national insecurity and instability is created. The risk of a nation exploding into anarchy, civil war, coups, revolutions or insurgency, etc. is dependent upon the extent these elements are threatened in society.

## Political State of Affairs in the Immediate Post-Independence Era

It will be recalled that the advent of political independence in most Sub-Saharan African countries was largely on the back of

political parties. Thus, in most African countries, political parties led and won the struggle against the colonialists. However, a few countries, such as Guinea Bissau, South Africa, Southern Rhodesia, Mozambique, Kenya, and Algeria had to fight bitter wars of liberation to achieve their independence. In the period shortly after independence, however, the struggle for political power among the newly emerging African political forces was keen, especially as political power was perceived as a means to an end. In effect, it was perceived by many as a fast track route to wealth and status.

The early political parties in government, therefore, exercised unbridled power. For example, Ghana's Osagyefo Dr. Kwame Nkrumah and Sekou Toure of Guinea, Modibo Keita of Mali, Julius Nyerere of Tanzania, among others, took advantage of the great prestige and honour they enjoyed as founding presidents, to consolidate their power and control by establishing systems of personal rule and patronage. This resulted in all state powers being concentrated in their hands. Parliaments were packed with supporters, chosen more for their known obedience and loyalty. Trade and students unions, farmers and women's organisations and other civil society groups were subordinated to the interests of government. As for the press, they existed merely as an outlet for government propaganda.

In dealing with political opponents at the time, most leaders like Osagyefo Dr Kwame Nkrumah of Ghana and Sekou Toure of Guinea resorted to arbitrary arrests, detention without trial and other forms of repression and harassment. Once in power, African leaders became pre-occupied with staying in power, relying heavily on special security services, such as, State Security

Services (SSS), Military Intelligence Services and Presidential Guards for their protection and the perpetuation of their rule.

Indeed, in some states, the security services were transformed into the reserved domain of the ethnic group of the head of state, and the security institutions became a major source of insecurity to the governed who suffered many human rights abuses and violations. For instance, in the early 1960s, it was proverbially said that in Ghana with majority in parliament belonging to the then Convention People's Party (CPP) - the ruling party - the government could do anything except change a man into a woman or vice versa.

To put it differently, governmental power was absolute in post-independence Africa. In this context, opposition members and figures were seen as a bunch of mischief makers who needed to be dealt with firmly. No punishment was extreme. Detention without trial, assassination, torture and brutalisation of the troublesome opposition was acceptable.

All of these suggest that, at the time, there was no need to consult the opposition in decision making. Governments, therefore, drew up their programmes and implemented them without any debates. The need for parliamentary approval, where the debate could become a prolonged shouting match, and a noisy opposition could criticise and delay the "Great Vision" and programmes of the leader was a mere irritant.

Unionists, religious leaders or members of the judiciary who took positions against the position of government were subjected to intimidation and harassment. In the circumstances, the desire to achieve political power by hook or crook motivated opposition parties of the time to adopt both above line and below line

strategies in order to overturn the existing political status quo and thus gain political power.

This involved bomb-throwing, assassination plots and complicity in coup d'états. Indeed nothing was ruled out in the contest for political power.

Another interesting phenomenon in opposition activity of the time, both within and outside parliament, was to oppose any programmes put forward by the ruling party. In these circumstances, there was nothing like a "national interest". Everything else was consumed by the desire to win power. It was necessary to block or hinder as much as possible good programmes initiated by government in order to prevent them from winning credit and thus the support of the people. Opposition parties, therefore, opposed for opposing sake, and where no good grounds existed for opposing, the opposition parties had to create them.

Increasingly, this state of affairs, particularly, state repression of opposition and the citizenry with dissenting views, coupled with economic decline resulting mainly from mismanagement and corruption, led to discontent, resulting in the spate of coup d'états that swept some of the first generation of political leaders, like Osagyefo Dr Kwame Nkrumah and Milton Obote of Uganda, from power in the 1960s and 70s.

In all cases, the reasons cited by the coup leaders were dictatorship, corruption, tribalism, nepotism and assorted malpractices they claimed had prompted them to intervene to restore honest and efficient government and national integrity. Ironically, however, Africa's military rulers like *General Gnassingbé*

*Eyadéma* of Togo and *Idi Amin* of Uganda who emerged on the scene to do house-cleaning, generally turned out to be more dictatorial, more corrupt, and unwilling to give up power than the regimes they had overthrown.

After the initial wave of military coups, political disturbances, including revolutions and violent secessionist attempts, leading to national insecurity and instability, have known no end in Africa. It is a matter of great regret that, because of these negative developments, Africa has become notorious for military interventions and political upheavals that have rocked the peace and developments of our respective countries. Somalia, Sudan and the Democratic Republic of Congo stand out today as African countries which have become epicentres of instability and scars on the conscience of the whole world.

Historically, therefore, the anti-democratic regimes of the last five decades left Africa democratically deformed in a number of respects. Therefore, as we look closely at the African continent today, the most urgent security challenge is the development of security frameworks that would address the continuing instability and guarantee durable peace in the region to permit meaningful development.

Needless to say, among the multiple reasons why there is continuing instability in Africa, one is paramount, and that is the intense, unhealthy political rivalry by political parties for power. For example, even though in Cote d'Ivoire, there was a semblance of restoration of multi-party democracy after the civil war in 2002, unhealthy political rivalry and the desire to hold on to power at all costs became the bane of that country.

## The New Direction of Democratic Development

As we are all aware, with the collapse of the Soviet Union and its satellite states in 1989, which resulted in the death of the one-party system, coupled with pressure from both the international community and civil society organisations, multi-party democracy and constitutionalism have become attractive on the continent over the last two decades. With the new wave of constitutional democracy that has swept over Africa, new constitutions have been written and adopted by many African countries. In the new constitutions, whole new chapters on basic freedoms and human rights have been inserted, and new clauses have been instituted to check excessive executive power. Democracy has, therefore, spread and taken root in many parts of Africa.

While the performance and quality of these democracies differ, the good news is that more people than ever in Africa are governed by elected representatives, and there is clear evidence that regimes that have so far failed to usher in democratic dispensation lack legitimacy. Citizens in such countries continue to demonstrate their aspirations for freedom, dignity and the opportunity to elect governments of their choice through engagement in various forms of struggle - regardless of the risks they may encounter in doing so. Libya and Zimbabwe are typical examples.

Undoubtedly, the multi-party system is gaining firmer roots as the popular choice and the path to democratic political power. The promotion and consolidation of democratic governance is increasingly being recognised in most African countries as the

most efficient means of preventing conflict and ensuring stability. Some states, like Botswana, Mali, Benin and Ghana among others have now established effective multi-party democracies which have successfully passed the test of holding free and fair elections and a transfer of power. Yet, politics remains a zero-sum game in some states, and multi-party democracy has re-introduced other factors which, if unchecked, could threaten the democratisation process.

## Challenges

However, multi-party system which is the soul and heart of democracy has become a source of instability in some African countries, like Zimbabwe, Nigeria and Cote d'Ivoire; and it appears that very few lessons have been learnt by some of our politicians from past experiences. Myopic politicians keep repeating past mistakes with amazing impunity.

The net result is that all the mischief, like lack of openness, injustice, political exclusion, ethnicity, greed, bribery and corruption, political intolerance, nepotism, cronyism, favouritism, abuse of incumbency, winner-takes-all and "we" and "they" syndrome as well as mudslinging and harassment of people with dissenting views - evils which have threatened national security and sometimes destroyed national peace and stability - in the immediate post independence Africa, are still being practised today by the political parties in power. Above all, some countries that claim to be practising democracy hold regular elections just to satisfy donor requirements. Such elections are not free and fair, as the incumbents in real terms only seek to entrench their rule.

On the other hand, opposition parties in some states, for various reasons, continue to display tendencies and pursue agenda that portray them as “enemies of the state”. They resort to confrontational politics instead of constructively engaging their governments in order to keep them on their toes and bring about healthy inter-party political rivalry. Consequently, relations between governments and those opposed to them are still characterised by suspicion, mistrust and, in some cases, outright hostility.

The intense, unhealthy inter-party rivalry, coupled with failure by governments to address injustices in society, and the profound gap between the few wealthy and powerful men and women at the top and the majority of the people who live in abject poverty have created tensions that have often resulted in armed conflicts and coups or revolutions that have contributed to the current atmosphere of instability. Some of the above issues raised have been responsible for the upsurge of violence in all the four major conflicts in Liberia, Sierra Leone, Guinea Bissau, Kenya and Zimbabwe, as well as Cote d’Ivoire and Nigeria in the recent past.

## The Way Forward

As pointed out earlier, political parties are the heart and soul of democracy and the bedrock of multi-partyism. Political parties, therefore, require structures, communication systems, forums and a salaried staff for effective performance to enable them to thoroughly transmit democratic culture in a political system. Yet, unfortunately, political parties in most African countries are presently among the most neglected of the political institutions



of state. They are made to operate as if they are purely private organizations with no state or national interest in their establishment, maintenance or existence. For instance, presently, political parties are financed largely by voluntary contributions from private individuals and organisations. Outside the benefits of incumbency, financial support for a political party remains inadequate leading to a withering of networks and linkages between the political centre at national headquarters, the periphery and grassroots.

There is no denying that political parties are under-resourced and under-performing. Typically, they tend to concentrate their resources around election campaigns and undertake little real activity for a sharper understanding of the most vital political and national issues, as well as the development of appropriate policies. A corollary of the above is their inability to recruit people of the requisite calibre, retain quality staff and to communicate and network effectively with their own branches.

This creates a void, eagerly filled by shadowy networks of so called party heavy-weights and “money bags” to effectively manipulate processes and linkages that exist between the centre and the grassroots to their own advantage. Undoubtedly, exclusive control of means of financing a party tends to concentrate internal power in a few hands, and the price that the citizenry ultimately pays for such inefficiency is instability leading to lack of social and economic prosperity. At present, a party’s ability to win political power appears to be the sole indicator of its success, to the extent that being out of government creates a problem for opposition parties.

This state of affairs has led to political parties holding on tenaciously to power. Stakes are high, and an electoral loss is regarded as a threat to personal and group interests. Elections are, therefore, a clarion call to battle. Denial of equal access to the media, restrictions on campaigning by opposition parties, harassment and intimidation of their supporters by government agents, have all been features of elections on the continent. After elections, losing candidates must necessarily flee their countries or remain to be arrested on trumped-up charges.

A key factor that has also impacted negatively on the democratisation processes in the region is the high level of corruption in politics. The records show that a great deal of such corruption is due, in the main, to the way political parties are funded. In some states, for instance, political parties are required to operate offices in all the constituencies throughout the country in order to qualify as political parties. This is good for national unity. However, it means that the parties have to find money to equip and maintain the offices, and this is expensive. Political parties, therefore, fall on contractors, companies, businessmen and businesswomen and even drug barons for contributions towards the maintenance of these offices and political campaigns.

Thus, political power in Africa today stands the dire risk of going to the highest bidder. At the end of the day, these major contributors subsequently wield considerable powers that sometimes override national security interests, due to their interference in decision-making at the seat of government. This throws into sharp focus the argument often made for state funding of political parties, which makes it worth considering. Another challenge is that the founders of some political parties

have developed such emotional attachment to the political parties that the development of internal democracy within such parties has become problematic. Added to this is the fact that we see people who start out in political life with no more advantage than the rest of us become filthily rich overnight when they are in power. In the light of massive corruption revealed during commissions of inquiry after the fall of governments, attempts have been made to curb corruption and encourage probity, accountability and transparency in governance through the institution of declaration of assets by public officials. But indications are that politicians are not comfortable in declaring their assets for reasons that ought to be obvious. This tendency suggests that acquisition of illegal wealth is still a major attraction to African politicians.

Another most disturbing phenomenon is the 'standard practice' of some political leaders and governments which, driven by a haunting fear of their political opponents, regard the military and other security agencies as instruments of the ruling party to be manipulated to ensure that however unpopular they become, they remain in office indefinitely. Towards this end, the roles of these institutions are relegated to that of protecting the ruling party, instead of the state. Consequently, the mode of recruitment, promotions and postings in these institutions is altered from that based on qualification to one based on political or ethnic affiliation.

This attitude is based upon the misconception that having a security apparatus that is loyal to the ruling party would make the regime more secure. On the contrary, it won't. For, there is ample evidence that real regime-security can only be achieved through

good governance. Liberia, Sierra Leone and a few other countries in the region are, particularly, illustrative of how parochial recruitment practices in the past could rapidly de-professionalize the security services and impact negatively on national stability. In this regard, this is the appropriate place to suggest that in a multi-party democracy, the military must be strictly used in accordance with the laws of the state, and not in accordance with the whims and caprices of political leaders. And never should the military be used to crush political opponents.

History is replete with lessons that political leaders who use the armed forces against their political opponents eventually become their own executioners. We cannot ignore the teachings of history! There is incontrovertible evidence that the military is not suitably qualified to run a government. When they do, they tend to do it inefficiently, and in the long run wreck the country and the armed forces. The rule, therefore, is: keep the military out of politics, and politics out of barracks. As for partisan media and the damage that it can do to individuals, organizations, institutions and democracy as a whole, the least said about it the better.

It must be emphasised that partisan press in post independent Africa has promoted divisionism and acrimonious politics, as they continue to wreck the reputations of innocent persons by publishing unsubstantiated statements, falsehood and untruths. Finally, it is sad to note that some states are still dealing with tensions arising from political exclusion, electoral issues, discrimination in the distribution of positions in state institutions, tenure prolongation and violent disagreements between sitting Presidents and their Vice-Presidents or Prime Ministers over serious fundamental constitutional issues as it is happening in Zimbabwe.

Some incumbent Presidents, like former Presidents Obasanjo of Nigeria and Mamadou Tandja of Niger had unsuccessfully sought to amend the constitution to prolong their stay in power. Undisputedly, these weaknesses are factors that have encouraged military adventurers to interfere in our political developmental processes, contributing to the current spate of instability in the region. So long as intense unhealthy political rivalry, suspicions and mistrust continue to constitute inter-party barriers, cooperation in the national effort to deepen democracy and promote development will remain to some degree elusive.

In this connection, attempts to change constitutions to suit short-term interests should be discouraged. For, no leader, no matter the level of his performance, knowledge, or achievement, must be considered indispensable in the management of the affairs of a country. Africa abounds in potential leaders, and it is only by upholding national constitutions that opportunities will be created for other leaders to emerge. The fact that the region has of late recorded a sharp drop in the prevalence rate of coups should not make us complacent. Instead, the trend should be seen as a window of opportunity to sustain good governance aimed at further preventing instability.

The unassailable fact is that there can be no compromise between stability and bad governance. The starting point on the path to instability is the beginning of bad governance. The challenge is enormous, but strengthening the democratization process in the region is the key to continental development and stability.

## Ghana's Experience

In Ghana, for example, strenuous efforts have been made, since the re-introduction of multi-party democracy, to maintain a sustained and respectable democratic culture, utilising political parties as the main vehicles for public participation. Realising that strong parties are the foundation of viable multi-party democracy, strenuous efforts are being made towards strengthening the capacity of political parties. To make the above a reality, The Institute of Economic Affairs (IEA) Ghana, in collaboration with the Netherlands Institute of Multi-Party Democracy (NIMD) has since 2002 embarked on a programme to increase the mileage of political parties for the enrichment of Ghana's multi-party democracy.

The IEA/NIMD Ghana's political parties programme has three principles underpinning its operations. These are:

- a. The levelling of the political terrain for all political parties.
- b. The building of the institutional capacities of all political parties.
- c. The enhancement of the public image of political parties in Ghana.

As pointed out, the first principle under-girding the programme is the creation of a level playing field for all political parties. The political parties are encouraged to have equal say in the affairs of the state and carry the same weight in so far as programmes

and access to resources are concerned. To this end, there are a number of cross-cutting activities, such as workshops, capacity-building seminars intended to give practical meaning to the first principle.

Additionally, once every month, a meeting of the general secretaries and policy analysts of the four main political parties in parliament is convened. There is also a monthly meeting of the chairmen's caucus; a body that comprises the national chairmen of the four main political parties in parliament. At these meetings, matters on strengthening multi-party democracy and the political parties programme are discussed in a free and frank manner. Consensus is achieved and the resolutions are carried out.

The second objective is the building of the institutional capacities of political parties to enable them to perform the roles expected of them in a multi-party democracy. Secretariats are set up within the parties and equipped by The IEA/NIMD with modern office gadgets and internet connectivity to make them functional in every respect. The secretariats have full-time staff, including policy analysts who engage in constructive research and forge party positions on national issues. Parties also submit individual action plans, and on the strength of these, are funded by the IEA/NIMD to provide training for specific constituencies in their parties. Examples of such constituencies include women and youth leaders of the party as well as skills training workshops for national and regional party executives. Parties are also supported in carrying out programmes which are intended to shore up their own capacity. Under the third rubric, strenuous efforts are made to enhance the public image of political parties. Political parties are, therefore, encouraged to produce well-researched manifestoes and strategic

plans, and the capacities of policy analysts are strengthened to enable them to make informed contributions to diverse national issues. Party perspectives are, therefore, now sharpened and there is clarity of focus permeating all the activities of the political parties in Ghana.

This programme, coupled with other initiatives by other non-governmental organisations, such as the Centre for Democracy and Development (CDD), Institute of Democratic Governance (IDEG) and the Friedrich-Ebert-Stiftung (FES), have greatly contributed to qualitatively improve the nature of Ghana's democracy leading to stability.

Furthermore, the existence of independent institutions, such as the National Electoral Commission, especially charged with the responsibility for organising elections, coupled with the Inter-Party Advisory Council (IPAC) - on which all political parties are represented - has contributed greatly to a healthy inter-party relationship and stability. At this juncture, it is pertinent to emphasise that since the re-establishment of multi-party democracy in Ghana in 1992 under the Third Republican Constitution, the country has experienced stability. The democratic space has opened up in the country, and unlike the past when changes of governments in Ghana had tended to be neither smooth nor peaceful, the country has successfully passed the test of holding five elections that had been adjudged free, fair, credible and peaceful. Ghana has also experienced four peaceful and constitutional transfers of power from President Rawlings' National Democratic Congress (NDC) to (NDC) in 1997; from



President Rawlings' NDC to President Kufuor's New Patriotic Party (NPP) in 2001; from President Kufuor to President Kufuor in 2005, and from President Kufuor to President John Evans Atta Mills' NDC in 2009.

This stability is traceable to good democratic governance which has made the country attractive to investors leading to economic growth. Indeed, Ghana has acquired a positive reputation based on her democratic credentials, and has become a remarkable example in Africa of peaceful coexistence among peoples of diverse ethnic and religious beliefs and backgrounds.

Therefore, that there is correlation between democracy, stability and development cannot be overemphasised.

## Conclusion

In conclusion, prevention of instability by the adoption of good governance practices appears to be a more effective, albeit a more difficult option for stemming the tide of instability on the continent than concentration on efforts to eliminate military adventurism through manipulation of military and security institutions. Events in the republic of Guinea, Guinea Bissau, La Cote d'Ivoire and the other conflict-prone states in the region clearly demonstrate that our democratic processes are still fragile, and more energy needs to be expended before it can be entrenched. To achieve durable peace and stability on the continent, the following steps need to be taken.

- a. Any strategy to consolidate democracy must include a strategy for nurturing and sustaining political parties

and making sure that they are not just electoral machines for achieving electoral victories, but also function effectively as vehicles for public education, leadership training, national integration and skills acquisition during inter-election periods. Poorly established and poorly maintained political parties produce poor quality leadership, both at the party level and at the national level itself. At present, a party's ability to win power appears to be the sole indicator of its success, to the extent that being out of government creates a problem for opposition parties.

- b. There is a need, therefore, for capacity-building initiatives that are relevant to strengthening party organisations, accountability, inter-party cooperation and civic education in order to entrench the norms and practices that support the multi-party system, instead of those that promote zero tolerance.
- c. Additionally, governments should seriously consider transparent means of funding political parties to discourage the parties from making money from corrupt and semi-corrupt deals.
- d. Partisanship should not be allowed to becloud the judgement of the executive in making appointments to state and public institutions. In this connection, it is important that state institutions, particularly the military and the police, are de-ethnicised and de-politicised to ensure that their composition is

broadly reflective of regional or ethnic balance with the avoidance of domination by any single ethnic or political group.

- e. Efforts should be made by elected governments to ensure good governance, and to reduce to manageable proportions, poverty, hunger, disease and ignorance, which remain a source of great threat to security to ensure that the people live peaceful, fulfilling and rewarding lives.
- f. Serious efforts should be made by countries in the sub-region to ensure that electoral systems are improved. In this connection, the process of formulating and reviewing electoral laws must necessarily involve the participation of all political parties and civil society groups. According to Professor Amos Sawyer, former interim President of Liberia and an authority on governance, "Electoral laws that are crafted solely by executives and enacted by executive dominated parliaments are frequently viewed with suspicions by opposition parties and civil society groups".
- g. Peaceful and constitutional alternation of power is a key indicator of the good health of the democratic system. Therefore, in addition to improving electoral laws, efforts must be made to ensure a level playing field during the conduct of elections. Moreover, it is important that electoral commissions in West Africa

are seen as independent.

- h. The government of the day must understand that the very norms of democracy dictate that the opposition should be its watchdog, and therefore, is a partner in the democratic process. On the other, hand, the opposition should see itself as an alternative government in waiting and must, therefore, cooperate with the government to enhance democracy and good governance. This presupposes that political parties should tolerate each other and realise that decisions should be based on accommodation and compromise. In fact, the relationship should be the kind that is observed in a good marriage: two separate people from different backgrounds living and working together harmoniously.
- i. There is the need for political parties and institutions that have oversight responsibility over the media to exercise effective control over the excesses of the partisan media.
- j. Elected leaders should stop the practice of striving towards the perpetuation of their office or devising means to cling to office beyond the clear mandate.

Elected governments must remember that they carry the sacred trust of the people to use the authority vested in them strictly in

accordance with the will of the people to ensure justice and the welfare of the people. For, the true test of democracy and good governance is a people content and happy.

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# Elections and Ethnic Politics in Ghana

*By Mr Colin Essamuah*

## Definition of Key Terms

### *Elections*

This refers to both the presidential and parliamentary ballots. The winner in the presidential poll needs to win more than 50% of the vote, or a run-off between the top two candidates is held, as happened in 2000 and 2008 General Elections.

### *Ethnicity*

This is used interchangeably with tribe, the kin group sharing linguistic and cultural characteristics, but is less laden with negative connotations than tribalism.

### *Ethnic politics*

Political messages directly laden with ethnic or tribal content, or perceived as such by the relevant electorate. For example, the Willie Horton episode in the 1988 US polls never registered on African immigrants in America as overtly racist, but Americans, black, white, or Hispanic, saw it as a crude and overt racial political attack on African-Americans, a solid voting bloc in the Democratic Party coalition.

## *Ethnic voting*

This does not necessarily imply a direct vote for parties led by people of the same ethnic background as the voter but also, in our situation, can and frequently mean voting against a person from a particular ethnic background, eg, an Ashanti voting against a perceived Ewe party, and vice versa. The confusion stems from the multi-ethnic character of the electorate.

## Introduction

Much has been said and written on the contentious issue of ethnicity, or tribalism, in our national politics since independence in 1957. Some politicians and commentators have sought to downplay the relevance of tribal identity as a significant key to unlocking political loyalty in the different political parties that we have had since 1957. Others have highlighted them in a manner as to suggest that it is the single most critical factor in national elections since 1951 when nationwide elections began.

Currently, however, this subject is treated by all sides as if it is a new phenomenon in Ghanaian electoral politics. Present discourse would like us to believe that the Volta and Ashanti votes are those which must be understood in these terms without any attempt at unraveling the historical foundations of ethnic politics in Ghana. This restricts the relevance of ethnic politics in our country to the emergence of ex-President Rawlings on the party political scene and the counterclaims on the legitimacy of his involvement. Such an approach to understanding the ethnic factor in our politics is in my view, mistaken, misleading and false.



It is my intention in this article to expose the historical roots of this phenomenon, examine the reasons for its resilience, and indicate the effect it may have on the future direction of Ghanaian politics. The proper place to begin any discussion on the ethnic factor in our politics is to state the bare truths about its relevance in the victory of either the National Democratic Congress or the New Patriotic Party since 1992. It is not true that the Ashanti vote was the guarantor of NPP victory when it won elections in 2000 and 2004. It is equally false to assert that the Volta vote ensured the victory of the NDC in the 1992, 1996 and 2008 elections. These statements are not the same as saying that the two regions are not the political bases, or, in Ghanaian parlance, the world banks, of the two respective parties. Herein lies the source of the confusion which bedevils all discourse on the relevance of the ethnic factor in electoral politics in Ghana.

In 2008, the total Ashanti Region voter population was approximately 2.3 million, and that for the Volta Region was 1.1 million. The massive support in these two regions for the NPP and the NDC respectively, could never have produced victory for the parties involved. Western and Central regions are Akan-dominated, whereas the Greater Accra Region, though home to the Ga-Adangbe indigenes, is also where the capital, Accra, is situated. This means that the region has large swathes of other ethnic groupings from all corners of the country, attracted by the magnet of government, and the hub of commerce and business. Which party the highly temperamental voters in these three regions vote for since 1992 has always guaranteed tenure in government for that party.

To a lesser extent, Brong-Ahafo Region may also be considered a swing region. In other words, all things being equal, meaning in effect that if all other regions maintain their voting patterns since 1992, the Ashanti vote alone cannot produce a winner in the NPP, and the same will be the case for the Volta Region in respect of the NDC since then. But Ghana is made up of ten regions including the three regions critical to a decision in elections since 1992. These are the bare facts, and yet we spend an inordinate amount of political energy to shore up specious arguments which give the impression that these two regions, Ashanti and Volta, hold the key to electoral decision-making in Ghana. Indeed, political heavyweights from these two regions have always sought, gained, and tried to justify their pound of flesh based on their support for their party when it won the elections.

Why the Volta and Ashanti regions vote the way they have done since 1992 is easily explained. Indeed, for the NPP which claims a direct descent from the National Liberation Movement (NLM) an overwhelming Ashanti vote has always been the norm since 1956, that is a year before independence in 1957! Indeed, this is one of the two principal reasons for the popular perception of the NPP as an Ashanti party, the other being the propensity of the party to choose its leaders from that region. For most critical observers however, the mere act of voting overwhelmingly for one party in any one particular locale, ethnically-concentrated or otherwise, poses no problem. The problem rather emerges with what happens after the vote and one party has won.

Ghanaians have become rather skilled in intuiting the impact of a particular voting pattern in both the appointments to government positions and policies of the government once installed in power. Unfortunately for the ethnic surgeons, the current NDC administration headed by President Mills does not fall neatly into this easily digestible ethnic blueprint. The reason is simple; President Rawlings hails from the Volta Region, and President Kufuor from the Ashanti Region, and so there was a direct co-relation between a political base and the home region of the successful presidential candidate which naturally propelled observers to examine the ethnic complexion of their respective appointments and policies.

President John Mills, on the other hand, hails from one of the three supercritical regions vital to victory for either of the parties, the Central Region, and the profile of his appointments so far defeats the easy analyses that the ethnic supremacists find supportive of their biases. Though it is true that President Mills has chosen several of his appointees at all levels from the three northern regions and the Volta region, and that these four regions have voted for the NDC consistently since 1992, the fact that the president is not an indigene of any of these four lucky regions may be proof, in the long term, of his intentions to reward those regions for their loyalty. Conversely, the smaller numbers of appointees from his home Central Region, one of the three supercritical regions, may well cost his party re-election, if one buys into the argument that where appointments are made relate directly to how well a party performs nationally electorally. The latter observation is an untested assumption, suggesting that the saliency of ethnicity in Ghanaian political behaviour may be overemphasised.

## Specifics and History of Ethnic Voting Behaviour

This observation leads naturally to an analysis of the details of the specific patterns of voting. Here, I seek an understanding of ethnic voting through an examination of the ethnic particulars and the history of the vote in the two most relevant groups, the Akans on one hand, and the Ewes on the other. The NPP believes that it has, or must have a lock, on the Akan vote, wherever they may be found in this country, and likewise for the NDC as far as the Ewe vote is concerned.

Unfortunately for the NPP, the Akans of Ghana have never voted as one for any one particular political party apart from the Progress Party of Dr. Busia in 1969. Indeed, in the August 29, 1969 election, the Progress Party secured 100 percent of the vote in three Akan regions, Ashanti, Brong-Ahafo and Central regions, and won overwhelmingly in the other two Akan regions, Eastern and Western regions. Why the successor parties to the Progress Party cannot repeat this startling performance is now generally accepted to be due to the enforced absence of a true Nkrumaist party in the 1969 elections.

The truth of the matter, however, is that notwithstanding the 1969 aberration, Akans though culturally and linguistically similar, are not through and through the same in political outlook. The several variations in the various Akan ethnic sub-groups can be subsumed under one feature, namely the differing attitudes and beliefs as they relate to traditional, pre-modern governance institutions and chieftaincy. This feature broadly divides the Akan into two distinct political halves when it comes to voting

in national elections; the Forest Akan and the Coastal Akan. Even here, the NPP has not, and cannot expect, to maintain an overwhelming support base in the Forest Akan locales of the Akan-speaking areas of the country. If that were so, the Western and Brong-Ahafo regions would not now be seen as swing regions in elections since 1992.

A great part of the reason the NPP, historically and at present, cannot count on the Forest Akan as a permanent natural base is because of the mass nationalising politics of their opponents in the governing CPP in the pre-independence years. Democratic, mass, competitive politics everywhere is the most powerful and enduring leveler in discrete societies and Kwame Nkrumah and his CPP represented that force in our electoral politics. This is the unique and positive factor in our politics alluded to earlier. To appreciate the import of this, one only has to examine the election figures for the 1956 elections, the first and last time the National Liberation Movement, formed two years previously, and devoted to the federalisation of the Gold Coast, was voted for in national elections, and its performance in the home base of the party.

Readers should remember that Ashanti then included the Brong-Ahafo region, which was hived off and made a separate region in 1959. In spite of the origins of the NLM in the Manhyia palace, and the violence which was visited on 'deviants' in the greater Ashanti Region, the CPP won 8 out of the 21 seats in the region, an astounding performance which in retrospect, can be attributed, among others, to a distaste for chieftaincy-based politics, right in the heart of Forest Akan country.<sup>1</sup>

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<sup>1</sup> *It is instructive that the only work cited by Nkrumah in his autobiography, Ghana,*

If you believe that the NLM was a tributary of the earlier United Gold Coast Convention (UGCC), then the performance of the original convention is even more revealing and dispositive of my thesis. Founded in August 1947, and headquartered in Saltpond, 18 miles away to the east of Cape Coast, which was the headquarters of the then ailing Aborigines Rights Protection Society, the UGCC was wiped out in the Coastal Akan areas one would have expected it to draw massive support from in the first nationwide elections in 1951.

But for our present purposes, the political problem of the Forest Akan winning over their coastal tribesman and tribeswomen can be directly traced to the seemingly permanent hijacking of the leadership of the NPP and its predecessor parties by Forest Akan personalities who invariably, have been closely linked to chiefdoms in Forest Akanland. From Danquah to Busia to Victor Owusu to Adu Boahen to JA Kufuor, right up to Nana Akufo-Addo, all the leaders in the the United Gold Coast Convention, (UGCC)/the National Liberation Movement (NLM)/ United Party (UP) / Progress Party (PP)/ Popular Front Party (PFP)United National Convention/ (UNC)/NPP tradition have been products of the traditional palace.<sup>11</sup>

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*the Autobiography of Kwame Nkrumah, was Professor Busia's published D.Phil dissertation on chieftaincy in Ashanti, The Position of the Chief in the Modern Political System of Ashanti [Oxford, 1951]. Nkrumah cited with approval, the damning indictment of the institution by his major political opponent who relied on the same chiefs for political legitimacy!*

<sup>11</sup>*Dr. Danquah was the direct brother of Ofori Atta 1, Okyehene, a famous friend of the celebrated Governor Guggisberg, and thus a pillar of British colonial rule in the then Gold Coast. Ofori-Atta's 1943 funeral had generated an interesting phase in national politics in the colonial state known as the Akyea Mensah case. Professor Busia was also the direct brother of the Wenchi Omanhene, Nana Apea Kubi, who was dethroned by the CPP government in 1959, and a rival claimant unseated, who died on the stool in 2006. Victor Owusu was a member of the Agona Royal*

To make it plain to voters that this trend is unlikely to change in the near future, one is struck by the real import of the current debate in the NPP as to the ideal ethnic background of its next national chairman. The Ghanaian voter is being informed by the seemingly objective discourse taking place in the NPP now that as far as the prime position of the party, the presidential candidacy, is concerned that is reserved for a Forest Akan nominee. What else can mask the obvious even as the stalwart Kwame Pianim complains that sometimes at party meetings, the preferred language is Twi, whether the mass of those meeting are at home in that language or not.

The advantage that the NPP may be deriving from its pro-Akan leadership as a springboard to the larger Akan vote is ironically also the likely Achilles heel of the party in national elections

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*Family, the paramountcy of Agona in Ashanti was a gift of the founder of the Ashanti kingdom, Osei Tutu 1, to his spiritual and political advisor, Okomfo Anokye. Paa Willie, a.k.a William Ofori Atta was the son of Okyehene Ofori Atta, who was a brother to Dr. Danquah, referred to above. Professor Adu Boahen was a proud member of the family of drummers at the Juaben palace. President Kufuor came from Apagyafie in Kumasi, a part of the Ashanti royal family from which the substantive Asantehene is enjoined to marry from customarily. Nana Akufo Addo is the cousin of the current Okyehene, and thus a grandson of Ofori Atta 1. What this means is that the NPP and its earlier related parties had always had an implied agenda to maintain strong political links to chiefs in general and to certain chiefs in particular.*

*Chiefs wherever they are in Ghana, are first and foremost, traditional pre-modern leaders of ethnic states. Coincidentally, Alan Kyeremanteng who contested the NPP candidacy with Nana Akufo Addo, claims ties with the royal family of Elmina. And this link is based on the fact that the father of his mother came from Elmina. In Akan custom, one hails from where one's mother comes from ad infinitum, therefore the hometown of her father is quite irrelevant to the issue of the customary roots of any Akan person. Of course, the obvious reason for this particular phenomenon, witnessed also in the Adu Boahen biography, when he claimed to come from Osiem in the Eastern Region, was to seek support and legitimacy from Akan indigenes of another region apart from the Ashanti region.*

because of the peculiar ethnic demographics of the country. Not many people realize that Akans, forest and coastal together, are only 44% of the total population and that an insistence on Akan political leadership is a recipe for permanent opposition for the NPP. Some do realise this possibility and instead of addressing it frontally in a multi-ethnic society, they are complaining like Germans before the First World War, of encirclement and containment of 'natural' Akan hegemony by anti-Akan elements in the polity.

This, in the face of the obvious fact that Akan cultural practices, linguistic norms and other social traits are the most pronounced features of Ghanaian society.<sup>111</sup> Notwithstanding the above, the most convincing argument against Akan ethnic voting as a valid political strategy is the fact that the CPP and its 1979 successor party, the People's National Party (PNP) in the past, and now the NDC, have solid and enduring roots in all Akan locales in Ghana. President Mills is as Akan as Danquah, Busia, Victor Owusu, Kufuor and Nana Akufo-Addo.

The performance of the NDC in the homelands of the Forest Akan is indicative of both the unsustainability of an Akan strategy and also of the national spread of the NDC as a party. Of course, this bodes well for successful inter-ethnic and cross-over identity politics in Ghana. But my assertions would be incomplete without an examination of Ewe ethnic voting.

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<sup>111</sup> A Ghanaian who speaks any of the two major Akan dialects, Twi and Fante, can feel thoroughly at home speaking his dialect in the national capital, Accra which is a Ga-Adangbe city, or in Ho, Tamale, Wa and Bolgatanga, all regional capitals of regions where the Akan population is negligible, or non-existent.



It is a straightforward and very short tale which should not detain us much. Ewes are the third largest ethnic group at 13%, after the Akan and the Mole-Dagbani who are 16% of the total population. 13% no matter how you juggle it is no figure to be scared of. It compels alliances and united action across the ethnic divide to make the Ewes a danger to any other group, if you are an unreconstructed Akan supremacist. Unsurprisingly, apart from ex-President Rawlings, they have had no real chance at the top, and J. J. Rawlings, we all know, came to power through a coup, which requires its own ethnic juggling to effect success.

In electoral politics, the Ewes have voted only three times since 1951 for an Ewe candidate, Komla Gbedemah, who lost miserably in 1969, and President Rawlings in 1992 and 1996. Compare this with the voting record of the NPP and its predecessor parties since 1951 and the pattern of ethnically-induced voting fits the NPP more than the NDC. Indeed in 1960, the Ewes voted en masse for Dr. Danquah, the United Party candidate for President in the plebiscite which ushered in republican status for Ghana. We seem to have conveniently forgotten that at the time, Ewes were the strongest allies of the Forest Akan-dominated United Party (UP).

The fascinating story of the split between the two hitherto allies require separate treatment. For our purposes, what is striking between the two parties, the NDC and the NPP, is the way succession to the leadership is handled. Rawlings naturally backed his Vice-President, Professor Mills, for the presidential candidacy of the NDC in 2000 to howls of indefensible protests from the NPP and the splinter Reform Party. The NPP succession, on the other hand, has been restricted to Forest Akan nominees even when a sitting non-Akan Vice-President is willing and able to step into the

leadership. This unnatural and barefaced ethnic feature of NPP politics is defended on spurious democratic grounds even by non-Akan elements in the party who all flood the camps of the Forest Akan candidates, thus legitimising the dominance of the Forest Akan in the NPP! Even now, there are credible rumours in the ruling NDC of Akan and non-northern members strategising to be the running-mate to Vice President John Mahama when President Mills completes his tenure, and Mahama steps into the job as party leader and presidential candidate. Such a natural process of succession, suggested by the national constitution, will never occur in the NPP anytime soon.

## Ethnic Politics: Saliency and Irrelevance

In conclusion, ethnic voting does exist in our politics, and would persist as long as Ghanaians remain a working coalition of various ethnic groups, validating appeals to tribal solidarity.<sup>IV</sup> Its prevalence, however, is not necessarily dangerous to our democracy because of both the unique demographics that Ghana enjoys, and the possibility that it must recede considerably, at least in the NPP for it to regain national acceptability. In the NDC, the numbers suggest that it is an incentive to build a nationally

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<sup>IV</sup> *Since the original publication, this may seem an overly optimistic assessment, confirmed by the consensus at the KAIPTC presentation that the security forces vote in tandem with their civilian counterparts. The pessimism spring from the observation by noted pollster Ben Ephson that ethnic-based voting behaviour accounts for about 5% of the total vote since 1996.*

*In the face of the fact that the last presidential election was decided after three rounds by a margin of about half a percentage point, 43,000 votes, we may have to temper our optimism as direct calls to ethnic solidarity have started in the preparations towards the 2012 election.*

cohesive and attractive party whose continuing success at the polls will confine the NPP into its ethnic homelands and professional guilds. But the political necessity of having a natural home for conservative, liberal democratic ideals in our politics will eventually give a new lease of life to the NPP, just as the overwhelming majority of Ghanaian social democrats have found a home in the NDC of today, which development, I have argued elsewhere, is the logical outcome of the demise of the CPP.

To reiterate, the prevalence of ethnic voting has been experienced in Ghana under conditions where national demographics do not favour outright ethnic-based politics. The politicians seem to realise this with the passage of legislation which expressly forbids sectarian and tribal parties beginning with the Avoidance of Discrimination Act of late 1957 which had the immediate salutary effect of compelling the formation of the United Party, which is the predecessor party to the current NPP.

In the 4th Republic, and also in the previous 2nd and 3rd Republican constitutions, similar legislation have found a firm place and been enforced. Thus, whereas ethnicity has been used to organise and sustain political parties in our history, the seeming balance between Akan and non-Akan has compelled a deliberate national character to be forged in the formation of parties, irrespective of perceptions in the polity to the contrary. To that extent therefore, that is, as an organising principle, ethnicity is a two-edged sword, firstly, helping to maintain and sustain interest in competitive party politics, and forcing the leaders to seek victory through specific cross-ethnic policies and programmes.

Secondly, the sword may well be used to tilt the balance in narrow contests as we saw in the last poll, though the swing of the eventual victor in the self-same Akan areas proved enough to prevent disaster and chaos.<sup>v</sup>

The employment of the ethnic card in Ghanaian politics is thus fraught with danger in the sense that it may either signal the collapse and disappearance of either of the two major parties, or push us over the edge to join the sad roll call of other African countries whose failure or refusal to manage the problem underlay the chaos and instability they reaped. One may not be as hopeful of 2012 and beyond if the clarion calls to ethnic solidarity presaging the next poll are not contained and managed appropriately. Perhaps, it is in the conscious and deliberate efforts of political leaders across the parties that we may avoid the fate of other countries.

The two major parties in Ghana do go to extraordinary lengths to give off a public aura of national and democratic acceptance, openly poaching supporters in staged 'defections' and constructing elaborately-staffed (though elected!) national slates and tickets to appeal to just more than the respective base of their parties. And they are very quick to deny their ethnic flavours, trumpeting their appeal across barriers of tribe and language, region and district, and showcasing these advantages, all in the competitive spirit engendered by party political activity and the demographics of specific areas.

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<sup>v</sup> See the detailed article on this by Heinz Jockert, Dirk Kohnert and Paul Nugent, online at <http://mpr.a.ub.uni-muenchen.de/16167>, MPRA Paper No. 16167 of July 10, 2009.

In all this, we also tend to overlook the historical fact that in spite of the difficulties and the tragedies of other states, most African countries, like most nations in the world, are multi-ethnic, the result of a process of state formation in which the various groups never had the opportunity to choose who they will co-exist with in peace on a contiguous piece of land. The struggle for supremacy along ethnic lines is just therefore another arena in which the eternal quest for the good life and the pursuit of happiness is contested.

That it results in tragedy does not change the fact that the 'race card' in a place such as the United States, or France, or Germany, is of less threat to those societies as the ethnic or tribal card has been to our societies. The tragedies, regrettable as they are, are our awkward responses to a problem which is more universal than is readily admitted. Our unique contribution may be the explosive mix of the expectations of our modern world and the resource constraints which are easy to mould into the ethnic crises which bedevils elections and politics not only here in Ghana, but in Africa as a whole. So far in Ghana, we have been lucky, and the luck will persist as long as all of us are aware of the consequences of the failure of management.



# The Rule of Law and National Security

*By Mrs GiftyAnin-Botwe*

## Objectives of this Presentation

This presentation is based on the rule of law interface with national security, International human rights norms and standards in democratic governance, some conflicts existing between rule of law and national security and the ability to resolve the conflict in the national interest.

## Introduction

Rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself is 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 measures to ensure the adherence to the principles of:

- a Supremacy of the law

- b Equality before the law
- c Accountability to the law
- d Fairness in the application of the law
- e Separation of powers
- f Participation in decision-making
- g Legal certainty
- h Avoidance of arbitrariness
- i Procedural and legal transparency
- j Democracy
- k Human rights

The success of rule of law depends on ensuring that there is a holistic approach by local institutions in conforming to best practices:

- Local actors (Judiciary: judges, prosecutors, public defenders, lawyers, court registrars, court clerks and translators)



- Law enforcement agencies – (civil police, armed forces, customs excise and preventive service, immigration officials)
- Correctional System – correctional officers and prison administrators.

All these must be strengthened to guarantee that international standards work hand in hand with local laws to enhance fairness and effectiveness of the legal system.

Why are maritime pirates kidnapping ships and holding people to ransom? This is a straightforward affair. Warships should go to the area where the pirates operate, engage the pirate ships and shore bases, destroy their ability to continue their criminal activities, arrest, try and imprison them. This has not happened because rule of law must prevail.

Today, international law provides universal jurisdiction for the prosecution of pirates; human rights considerations mean that the military operations launched to combat their activities are constrained by serious inhibiting issues that deal with rights in detention and the need to ensure both fair trial and fair treatment on conviction in the global world.

## What is the Rule of Law?

The rule of law does not have a precise definition and it can vary from nation to nation and legal traditions. Politicians, lawyers, economists and policymakers use the term often to characterise

a certain type of legal political regime. The World Bank refers to it as economic growth, political modernisation, the protection of human rights and other worthy objectives. In the past two decades, many developing countries have prioritised their policy agendas to promote the rule of law. Generally, the rule of law can be understood as a legal political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. In basic sense, it is a system that attempts to protect the rights of the citizens from arbitrary and abusive use of government power.

In his book *The Morality of Law*, American legal scholar *Lon Fuller* identified eight elements of law which have been recognised as necessary for society aspiring to institute rule of law.

- Laws must exist and be obeyed by all. However certain legislative provisions can properly be made for some categories of people such as children and the mentally-ill based on the peculiar characteristics of such categories.
- Laws must be published.
- Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. For example, a court cannot convict a person of crime committed before a criminal statute prohibiting the conduct is passed.
- Laws should be written with reasonable clarity to avoid unfair enforcement.

- Laws must avoid contradictions.
- Laws must not command the impossible.
- Laws must be accessible and so far as possible intelligible. If everyone is bound by the law they must be able without undue difficulty to find out what it is, even if that means taking advice, and the answer when given should be sufficiently clear that a course of action can be based on it.
- Laws must stay constant through time to allow the formalisation of rule; however, laws also must allow for timely revision when the underlying social and political circumstances have changed. Official action should be consistent with the declared rule.

Standing alone, these eight elements may seem clear and understandable, but they are actually difficult to implement in the real world because governments are often compelled to prioritise one goal over another to resolve conflicts in a way that reflects society's political choices. Making too many laws that are too detailed and specific, for example may make the legal system too rigid. Inflexibility could cause the courts of a country to neglect the human element of each law.

Additionally, rule of law is important to the market economy because it is the common reason which parties can make agreements. Parties will be confident because disputes can be resolved efficiently and fairly. Again, the rule of law assures market participants that the government will adopt hands-off approach to investments and production, allowing participants

to fully exercise their rights in relation to land, labour and capital. Rule of law requires compliance by the state with its obligations in international law. The rule of law also serves as an important assurance of social rights and government accountability.

## International Human Rights Norms and Standards

International human rights norms and standards play crucial role in ensuring respect for the rule of law. In a situation of a breakdown of law and order as well as the weakened capacity of state institutions with respect to law enforcement, the role of international standards is critical. International norms and standards also strengthen existing domestic laws to embrace human rights practices.

### What are International Human Rights Norms and Standards?

Rules and norms which regulate the conduct of states and other entities which at any time are recognised as being endowed with international organisations, international law grew to respond to the need of states to co-exist. For instance, in Ghana, most of the human rights norms are catered for by the 1992 Constitution.

## Concept of the Rule of Law under International Law

International rule of law is an emerging concept which is a crucial dimension of modern statehood. While at the national level judiciaries provide the institutional safeguard that compels state actors to comply with domestic legal obligations, there is no such corresponding international judiciary to ensure that state actors comply with their international legal obligation. This notwithstanding, it can be said that domestic law is increasingly being complemented by international rule of law. The international community has been making efforts at establishing standards of the rule of law.

### Basic Principles of International Rule of Law

- The UN charter affirms the determination of the peoples of the world to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging human rights and fundamental freedoms without discrimination.
- International standards on judicial independence: the United Nations basic principles of the judiciary were adopted by the seventh UN congress on the prevention of crime and the treatment of offenders held in Milan. These standards were developed to provide guidelines for the independence of judges and the selection, professional training and the status of judges and prosecutors.

- The universal declaration on human rights enshrines the innocence and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- The international covenant on civil and political rights guarantees fair and public hearing and the right to be tried without undue delay.

## International Principles and the Rule of Law

### *The UN Security Council*

The security council is an executive organ of the United Nations. Its primary duty is the maintenance of international peace and security. The council comprises fifteen members; five of them are permanent members (USA, UK, Russia, China, and France). The five were chosen on the basis of power politics in 1945 and have veto power. Of the other ten non-permanent seats, it is accepted that five should be allocated to Afro-Asian states, one to Eastern Europe, two to Latin America and two to Western European and other powers. The council has other important functions such as trusteeship territories admission, suspension and expulsion of members by the general assembly on the recommendation of the security council. Amendment to the UN charter requires ratification of all permanent members and appointment of the judges of the International Court of Justice who are elected by the general assembly and security council.

A lot of countries have ratified all the UN human rights instruments and are directly applicable in the state's legal system.

The following are some of the UN human rights instruments:

- International Covenant on Economic Social and Cultural Rights,
- International Covenant on Civil and Political Rights, including Optional and Second Optional Protocols,
- Convention for the Elimination of all Forms of Racial Discrimination,
- Convention for the Elimination of Discrimination against Women,
- Convention against Torture and other Acts of Cruel, Degrading and Inhumane Treatment or Punishment,
- Convention on the Rights of the Child,
- Optional Protocol: Sale of Children,
- Optional Protocol : Armed Conflict,
- Rome Statute of the International Criminal Court,

- Principles for the Protection of Persons with Mental Illness for the Improvement of Mental Health Care and
- Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.

## The Role of Rule of Law in Democratic Governance

The rule of law secures a democratic system and makes a state safer and agents of violence are clearly put on the defensive. Security and rule of law are fundamental to good governance. As the monopoly over the legitimate use of force is established, democratic governance also needs the architecture of law: Ministry of Justice, courts, legislative scrutiny, law enforcement agencies, regulatory bodies, public defenders, police, correctional system, legal statutes, contracts, university level academic education to train lawyers, judges and investigators, along with the engagement with the civil society to promote a culture of lawfulness. Security without the rule of law puts a society at risk. There is access to justice under rule of law dispensation where criminal cases are expedited through the courts, thus, making the legal process more accessible to everyone, thereby restoring confidence in the judiciary system. Rule of law programmes are sustained with adequate security which must be established within legal norms.

The country should design, implement and make the sacrifices for its own programme of reform and institution-building in order for the effort to take deep roots in the political culture. The primacy



of legitimacy and the rule of law must be a central component of instruction, doctrine and education and planning for governance activities. The presence of rule of law is a major factor in assuring voluntary acceptance of a government's authority and therefore its legitimacy.

A government's respect for pre-existing and impersonal legal rules can provide the key to gaining widespread and enduring social support. Such government's respect for rules – ideally ones recorded in a constitution and in laws adopted through credible democratic process, is the essence of the rule of law. As such, it is a powerful potential for any democratic governance.

The practice of rule of law requires political will, resources and time to repair and build institutions of state and develop the rules of democratic community that are generally accepted by the populace. The rule of law makes democracy work because law is the collective will of society, making possible the monopoly on the legitimate use of force, equal rights and social order. Six elements comprise the rule of law: order and security, legitimacy, checks and balances, fairness, effective application, efficiency and integrity.

As the monopoly over the legitimate use of force is established, democratic governance also needs the architecture of law.

A state has internal and external legitimacy and a monopoly on the use of force that no other entity such as terrorists and guerrillas can have. Since the rule of law represents a society's collective will on values and norms, justice becomes essential for healing wounds between groups that have been killing one another. Post conflict situations especially demand restorative

justice, which requires the search for truth, assigning blame, finding the appropriate balance between forgiveness and punishment for the guilty, providing reparation and satisfaction to victims, establishing confidence in the peace process in state institutions, and enforcing the law as essential for sustainable peace.

All of the above presupposes the existence of an effective state, endowed with the capacity and resources to perform these functions such as exercise legitimate monopoly on means of violence, administrative control, management of public finances investment in human capital, the delineation of citizenship rights and duties, provision of infrastructure services, formation of the market, management of the state asset (environment, natural resources and cultural assets), international relations and rule of law. These functions are mutually dependent.

When these functions are performed in an integrated fashion, a virtuous circle in which state decisions are made in different domains, bolster enfranchisement and opportunity for the citizenry.

The process will reinforce the legitimacy of decision-makers and their decisions. Rule of law reduces recurrence of criminal violence, terrorism, human rights atrocities, humanitarian disasters, destruction of the environment, contraband goods, displaced populations, gun-running and narcotic-trafficking. However, a good governance state is not cheap. The state should open up and hire professionals and assemble budget to perform essential functions. Authority must be established before it can

be constrained. The state must be the authoritative defender of standards of human decency and law. This is the core reason why states and their law enforcement agencies must obey and be held to a higher standard. Since the state and its officials are bound by laws, they cannot act arbitrary or abusive.

There should be stability, reconstruction and legitimacy. The planning and execution of stability and reconstructions must balance the need for security with the imperative of justice. The task is to achieve both (stability and legitimacy) without putting the state at risk. Legitimacy is the conditional right that the people confer on the government to govern.

It has a procedural (elections, rules, ability to organise, and compete for political power) and a substantive connotation, the latter requiring effective governance. In effect, legitimacy affects all aspects of democratic governance. For example, policemen can perform their duties if the people regard the government and its uniformed representatives as legitimate, honest and professional officers of the law. It demands a system of vertical and horizontal accountability which must be structured and empowered to function. In vertical accountability, office holders are answerable to other institutional actors of the government, such as courts, the minority in parliament, audit agencies, Commission on Human Rights and Administrative Justice (CHRAJ)-ombudsman

Rule of law encourages the executive, legislative and judicial branches to function independently. There are checks and balances to be adhered to. Rule of law spurs economic growth and helps to create a safe and secure environment for recovery

in the aftermath of conflict or disaster. At times, complexities in pluralistic legal landscapes call for programmes which will include different justice approaches and systems based on bottom-up approach and immediate justice needs such as the protection of women's rights and access to legal services. Other grave challenges in the justice sector are police brutality, inhumane cells and prison conditions, lengthy pre-trial detention and impunity for perpetrators of sexual and gender-based violence.

Rule of law creates room for justice support and capacity assessment to enable operators analysing demand and supply for services, thus creating a baseline for monitoring and evaluation. This improves legal awareness, legal aid and counsel, adjudication, enforcement of rules and regulations for civil society, the media and other stakeholders. Adequate training is lined up for the judiciary to enable them to perform creditably with enhanced skills and experience and win public confidence.

Lastly, private sector investment is encouraged with macroeconomic programmes reaching millennium goals, policy analysis and decentralisation activities. Rule of law in governance enhances the consultations and consensus-building mechanisms and processes with civil societies. It encourages parliamentarians to rise above party politics and focus on national goals. The state constitution must be able to provide the basic framework for good governance.

## What is National Security?

National security suggests the ability of a nation state to maintain stability through the use of economic, military and political power and the exercise of diplomacy. To be able to do this the following measures must be taken into consideration:

- Using diplomacy to rally allies and isolate threats
- Marshalling economic power to facilitate or compel cooperation
- Maintaining effective armed forces
- Implementing civil defence and emergency preparedness measures (including anti-terrorism legislation)
- Ensuring the resilience and redundancy of critical infrastructure
- Using intelligence services to detect and defeat or avoid threats and espionage, and to protect classified information
- Using counter-intelligence services or secret police to humanely protect the nation from internal threats.

Security is increasingly viewed as an all-encompassing condition in which people and communities live in freedom, peace and safety. They participate fully in governance of their countries; enjoy the protection of fundamental rights; have access to resources and basic necessities of life and inhabit an environment which is not

detrimental to their health and wellbeing. Institutions that use the rule of law include the executive, parliament, judiciary, legislative, select committees, custom excise and preventive service, judicial and reform institutions, civil society, intelligence service, the press and human rights organisations, convention for the elimination, customary and traditional justice systems, private security companies and political parties.

There is no single universally-accepted definition of national security. A variety of definitions provide an overview of the many usages of the concept as a requirement to maintain the survival of the nation state through the use of economic and political power and the exercise of diplomacy. However, the concept remains ambiguous, having originated from simpler definitions which initially emphasised freedom from military threat and political cohesion to include the military context as suited the circumstances of the time.

Walter Lipmann in 1943 defined national security in terms of nation and war: "A nation has National Security when it does not have to resort to War, or the threat of war, to preserve its legitimate interest". *U.S. Foreign Policy: Shield of the Republic* (1943)

## Relationship between Rule of Law and National Security

Nations should support activities that will increase dialogue among the security forces, actors in the wider security system, civil society organisations such as the media, women's groups, ethnic

minority groups and the general public, bringing an appropriate mix of expertise. The government should demonstrate how to integrate the security system into government planning, public sector management, expenditure and budgeting processes as well as anti-corruption efforts.

Governments should develop workable multi-sectorial strategies and to help stakeholders determine what will work best for them. Challenges include how to maximise the use of scarce resources and find ways to build incentives into the system to promote change. National security should be people-centred based on democratic norms and human rights principles and the rule of law seeking to provide freedom from fear.

What are the necessary skill areas of work to support the rule of law, security and justice sectors? People with the right skills need to be around the table at the onset for organisational and institutional development.

## Reach a Common Understanding of the Problem and Objective

Support for the rule of law, security sector stabilisation and the justice sector involves many different departments within the criminal justice system, the indigenous government, non-governmental organisations and international agencies. Effective support can only be achieved if these groups have a common understanding of the context and the problem.

This can be achieved by bringing all the right people irrespective of party affiliation on board early for a joint assessment. This may feel time-consuming, when time is short, but ultimately saves lots of time unravelling misunderstandings or differences in analysis of the problem. Getting agreements on what the problem is, is also vital for developing a shared objective and unity of vision on the overall direction of engagement.

## Define and Measure against Outcomes, not Inputs

Once a common objective has been agreed, measures of effect need to be worked out. These must be outcome-based, not input-based, that is focused on achieving a security outcome, or resolving a particular problem. Building the capacity of a particular organisation may be a means to achieve the stated outcome. Be realistic from the outset: some quick wins will be possible but organisational development takes years. It takes even longer in stabilised environments, where the provision of security is fragmented and political commitment and state legitimacy are weak.

## Think about Coordination

The coordination of activities is notoriously poor for the security and justice sectors: between military, police and other civilian groups with indigenous governments, and between international donor agencies. Coordination is important to avoid duplication, ensure that overall, the utmost priorities are addressed and make the best use of the funding available.



## Balance Support to Personnel with Organisational Development

Security sector support has often been provided to recruit, vet, train and equip national security forces (the army and police in particular) or mentor commanders and police chiefs on a one to one basis. These inputs can be delivered quickly, are tangible, and in the case of mentoring directly appreciated. However, such support has often failed to deliver the intended improvements in security. Addressing personnel needs is only part of the picture. Structures and systems are also important, requiring individual capacity to perform well: pay, clear lines of authority, standards for performance, discipline, building and equipment maintenance, etc. Without these, even a talented commander or chief will struggle to do the job.

Institutional constraints on performance must also be addressed. These include administrative, financial and management capacity, as well as the need for cultural and behavioural change. Institutional change takes time to achieve a real impact – the earlier it starts the better. Expectations about pace of change must be managed, and an independent police commission needs to be set up to keep the police in check especially on brutalities.

## Address the Inter-dependencies between Organisations

International support to the security and justice sectors in stabilisation contexts has often had an operational focus on one organisation like the army, police, and the judiciary.

This can generate problems overtime such as:

- Building the capacity of a frontline security force but neglecting the capacity of infrastructures (for example; detention facilities or court functions) can mean that facilities are overwhelmed and conditions rapidly deteriorate.
- Building and changing the rules and ways of working in one organisation without checking for consistency with the standards and ways of operating in another can damage essential cooperation between the organisations. (for example there should be communication between the police and prison officials during the transfer of detainees from courts to prison.
- Focusing on an organisation without situating it in its broader context can risk a distortion of its role towards local and immediate priorities rather than national priorities. For example, too much of a focus on the internal security function of the police at the expense of their criminal justice and public safety function.
- Lack of opportunities to inculcate a culture of accountability and oversight of the security and justice sectors. Attention to accountability and transparency can help create a culture of respect for the rule of law within security and justice institutions.
- Raising questions about future roles and resource issues with ministers and senior officials when opportunities arise. New initiatives such as recruitment and training

programmes, for example should adhere to standards and not party activists.

- Promoting coordinated approaches by raising questions and supporting light-weight coordination structures and making linkages to broader public finance and administration issues in government.
- Offering basic support to establish policy-making capacity: identifying offices and equipment, recruiting suitable individuals from within and beyond the current workforce, defining systems of collating and reporting information and preparing policy briefing for ministers. An example is high level strategic planning units.

## The Challenges of the Rule of Law on National Security in Ghana

Ghana has a rich and varied national security history. During the 19<sup>th</sup> century, the Ashantis, one of the major ethnic groups in Ghana relied on military power to extend rule throughout most of what eventually became the modern state of Ghana.

They engaged in a series of military campaigns against the British in 1873, 1896 and 1900 for controls for the country's political and economic systems. After the British established a protectorate, thousands of Ghanaians served in the Royal West African Frontier Force.

In the two world wars of the 20<sup>th</sup> century, tens of thousands of Ghanaians fought with the western allies. From 1945 until 1957 the British used the Ghanaian army and police to maintain internal security. In 1992, Ghana's military regime presided over multi-party elections which the regime hoped would return the country to a parliamentary system of government. The military and police helped to maintain internal security and to preserve Ghana's territorial integrity. Again, the Ghana armed forces and police personnel participated and continued to participate in the UN peacekeeping operations especially in Cambodia, Croatia, Eastern Sahara, Iraq, Kuwait, Sudan and Lebanon.

Ghana also contributed troops to the Economic Community of West African States monitoring group peacekeeping force in Liberia, Sierra Leone and Ivory Coast. Following its return to democracy, Ghana has endeavoured to establish accountable democratic control over the security sector and to improve civil military relations through a number of institutional reforms, one of which has improved security governance.

Historically, Ghana's experience in protracted military interventions became major sources of public insecurity rather than human security. Military rule sometimes compromised state adhering to the principles of good governance, respect for human rights, administrative justice and the rule of law. The return to democratic rule was anchored primarily on the promulgation of the 1992 Republic Constitution. This constitutional order has been consolidated by the deepening democratic processes through which successive governments have changed political leadership

from different political persuasions through democratic elections for the past years. There are few challenges of the rule of law in Ghana's democratic dispensation. In defending itself or deterring military aggression and maintaining internal security calls for huge money from the country's budget. There is the need for establishing and maintaining protective measures that will ensure a state of inviolability from hostile acts or influences as well as natural disasters.

There is also the need for stability of the social order which is a threat to sovereignty. These are transnational groups of political importance including tribes, minorities, some religious organisations and chieftaincy problems. Non availability of industries for employment and lack of economic power, inability to create jobs for the youth from natural resources in the manner desired. Environmental issues such as global environmental problems could also become a threat to national security. Climate change is being discussed as a threat due to global warming, deforestation, and loss of biodiversity. Currently, the rise in national population, the youths drift to municipal areas of the country especially the capital, the dwindling availability of farm land, hawking or selling on ceremonial streets of the cities must be addressed.

Although, national security measures are imposed to protect society as a whole, many such measures turn to restrict the rights and freedoms of some individuals of society. In Ghana, there have been an instance of police brutality, inappropriate arrests, investigations and interrogations of suspects of the Bureau of

National Investigations, not forgetting inhumane treatment in the country's prisons. Other national security challenges include the right to criticise issues devoid of insults, threats and assaults at bye and general elections, which at times lead to injuries, death, arbitrary arrests and detention without counsel for suspect being present. Rules and regulations on the rights of people are not made available to civil society.

## Just Go through these Scenarios

- Accomplices of armed robbers are arrested; the gang leaders are looking for them. Once you take them to court, these leaders will go into hiding and for the element of surprise to be effective, they have to be kept incommunicado for a few days. However, the rule of law stipulates that a court order needs to be secured for them to be kept in detention for more than 48 hours;
- A potential terrorist is arrested, in the act of, say, preparing to blow up some important public buildings. He is refusing to cooperate and there is the need to apply some higher level of force, to ensure that his other gang members, who have escaped, do not repeat and do not carry out their deadly plan.

## Conclusion

Rule of law and national security both aim at protecting the state and individuals' freedom, liberty, and security towards national development. There are, in practice, bound to be conflicts. These conflicts should be harmonised in the national interest. Let us move forward in our democracy by upholding the rights of the citizenry. Let us respect the presidency and accept that the President is for all Ghanaians irrespective of which political party he is affiliated to.

## How can these Challenges Be Addressed?

- The executive should create room for ministers and heads of security services to participate in policy decision-making depending on the division of responsibility between national and international authorities.
- There should be clear processes and policies that aim at enhancing the institutional and human capacity needed for law enforcement agencies including the justice system to function efficiently and effectively.
- There should be a policy on general rule of law protections including remedies and must be available to all. Civil education should start from the schools for children growing into adulthood to learn that the state belongs to them.

- People who publish issues and items bordering on national security can enjoy full academic freedom provided they do not disclose classified information, jeopardise operations of security or misrepresent Ghana's official policy. They can offer new and sometimes controversial perspectives in the interest of furthering debate on key issues.  
In all cases, the reports should be cleared for public release with the national security agencies.
- Rule of law should permeate all aspects of governance. Policies and programmes should be geared towards human rights laws and the protection of the citizenry. Human rights and freedoms should be recognised in international, regional or national law and standards.

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# Managing Contemporary Threats to West Africa through Peace Education

*By Dr Ken Ahorsu*

## Introduction

One of the main challenges facing contemporary West Africa, an emerging and important geostrategic sub-region, is how to maintain peace, security, and stability for its people, societies and corporate bodies.<sup>vi</sup> Since independence, the sub-region has grappled with self-reinforcing structural weaknesses, exigencies of state building, governance and development crises, and elite malfeasance.

These engender mainly internal threats to security. The security conundrum has since become formidable and onerous to maintain. Contemporary diffuse and destabilising forces of globalisation, transnational threats, multi-party election crises, factionalism, civil strife, unemployment, poverty, and their effects have compounded the security crises. At the heart of this turmoil is the crisis of individual and group identity. The threats and security crises arise and endure primarily because of state weakness and policy failures.

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<sup>vi</sup> *These challenges and pre-requisites are unique in their own rights, but equally intricately and inseparably linked with each other. Besides, peace, security, and development have merged in contemporary security discourse.*

The conundrum is: how can the sub-region cope effectively with the security challenges in a dramatically changed and globalised environment of profound disarray and increasing vulnerabilities? How can it guarantee security in a paradoxical sub-region of globalisation-localisation, integration-fragmentation, harmonisation-differentiation, rich-poor, rural-urban, and formal and informal?

In addressing the above questions, the paper identifies the formal-informal, elite-masses, and urban-rural divides, and the gulf of knowledge on security issues between these divides as some of the main faultlines that needs to be addressed in order to improve the readiness of the sub-region to meet contemporary security challenges. It seeks to demonstrate that given the enduring structural weaknesses and diffused nature of transnational threats, the security of the sub-region will be greatly improved and secured when the West African security public is enlarged to cover both the informal and formal sectors.

It envisages an all inclusive approach to security management in the sub-region. It, specifically, calls for the institution of peace education at all levels of the West African society to help create greater awareness of the nature and dangers posed by transnational threats, and on the interconnectedness of peace, security and development. The central argument is that a united and well-informed 'society' is one that is best empowered to understand, recognise, confront, prevent and overcome threats and challenges through perpetual vigilance. It means bringing peace and security issues directly to the West African people.

The paper is organised into six segments. The first segment, Security Complex Sub-Region, presents an overview of the West African security problematic; and that highlights the self-reinforcing structural weaknesses of states in the region, and the gulf between the formal and informal sectors of its societies. The next segment, A Security Community, argues that the structural and security threats are common to all West African states and can only be effectively addressed in collaboration; and that the sub-region's pioneering conceptual and structural response to threats since the 1990s civil strife has transformed the West African sub-region into a community security.

The third segment, An Emerging Geo-Strategic Region, points out that the sub-region's putative global importance amplifies the currency of its security concerns and seriously predisposes it to transnational threats. The fourth segment, the Evolving Concept of Security; and Transnational Threats to Peace and Security, overviews the changing nature of the concept of security and critically highlights the diffuse nature of transnational threats and their relevance to the sub-region.

Instead of compartmentalising the threats according to époques and genre, the spectrum of threats confronting the sub-region is conceptualised as mutually reinforcing. The next section covers peace education, a dedication to peaceful co-existence as an established disposition and enhancing one's self-assurance as an agent of peace; and acting together as a community to safeguard the safety of the community and its constituents. It entails management of threats through analytical problem-

solving processes, and prevention of violence through awareness, vigilance and avoidance policies at all societal levels.

Finally, the paper concludes that peace education has a great promise for a greater integration, unity, and securing West Africa; however, success depends on a well-conceptualised, planned, resourced, and implemented peace education programme; as well as the necessary political will, diligence, and resources, especially governments' unwavering will to stay the course.

## A Security Complex Sub-Region

Fundamentally, West African states are weak and exude security complexes. They differ markedly from the Weberian conceptualisation of the modern state as wielding monopoly over the legitimate use of violence. They are often vulnerable to the emergence of factionalism that sequentially undermine their sustained stability, and ability to control elements normally perceived as falling within the responsibility of the state.<sup>vii</sup> State weakness is both the result of low rate of development and a product of powerful economic dynamic.<sup>viii</sup> They are also vulnerable to the impact of the global political economy and globalising socio-cultural values that generate a set of constraints and opportunities. The articulation of the modes of production paradigm explains the tricky economic and social formations as consequences of the interpenetration of capitalist and pre-capitalist modes of production that impinged upon and conserved

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<sup>vii</sup> Ken Ahorsu, *The Political Economy of Post-Cold War Conflicts in Sub-Saharan Africa: The Natural Resources Factor*, Ph. D. Thesis, University of Kent, 2007, p. xii.

<sup>viii</sup> Barry Buzan, *People, States and Fear, Second Edition*, (London: Longman, 1991), pp. 246-247.

pre-capitalist forms of production to serve the accumulation needs of capitalism.<sup>ix</sup> The partial penetration of capital and transformation of the African economies, and the non-availability of universal commodity production and relations make the region a dual society, formal and informal. The weakness within and outside African economies are mutually reinforcing.<sup>x</sup>

Post-colonial West African states are 'weak states' or 'security complexes' owing largely to their common and troubled colonial foundations that predispose them to security vulnerabilities that are primarily internal in nature. Inherited structural conditions such as ethnic heterogeneity, porous borders, underdeveloped and dual (formal/informal) economies, and differentiated rates of development fundamentally make them vulnerable to domestic problems of legitimacy, factionalism, disarticulation between state and society, and the exigencies of the international political economy. The historical structural weaknesses were exacerbated by the challenges of nation-state building after independence. The crises of the state was marked by dysfunctional governance of

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<sup>ix</sup> For an adaptation of the articulation of modes of production as an explanation for contemporary conflict and security crises in Africa see Ken Ahorsu, "Contemporary Sub-Saharan Africa and Violent Conflicts: A Prognosis" *Legon Journal of International Affairs (LEJIA)*, Vol. 6, No.2 (November, 2009), pp. 62-64.

<sup>x</sup> State weakness is however a variable and not a constant. Each African state responded differently to colonialism depending on the degree of incorporation, and subjugation suffered. It depended on their historical background and experiences (slavery, forced labour, administrative fiat, destruction of basic institutions), their ecology and resources, and their trade and exchange relationships during pre-colonial, colonial, and neo-colonial times. It also depended on the resourcefulness and creativity of their African elites. See Ken Ahorsu, 'The Political Economy of Post-Cold War Conflicts in Sub-Saharan Africa,' *op. cit.*, p. xii; and Peter Gutkind and Immanuel Wallerstein, 'Introduction' in Peter Gutkind and Immanuel Wallerstein, eds., *The Political Economy of Contemporary Africa* (London: Sage Publications, 1976), p. 9.

elite factionalism, ethnocentrism, patrimonialism, poor economic and development policies, authoritarian rule, political exclusion, widespread human rights abuse, corruption, poverty and discriminatory terms of international trade. During the Cold War, real politic, authoritarian rule, and violence preserved the status quo in most states; even as the standard of living plummeted, social amenities declined, and segment of societies were disenfranchised and alienated.

At the twilight of the 20<sup>th</sup> Century, the long drawn out self-reinforcing structural collapse, governance and economic crises, neo-liberal policy shocks, and trials of transition to democratic rule further weakened the states. The withdrawal of the developmental state and subsidies on social amenities due to neo-liberal conditionalities, concurrently eroded the sovereign functional integrity of the states and increased the leverage of international financial institutions (IFIs), non-governmental organisations (NGOs), and civil society (and popular religious and ethnic associations) as main sources of resources and succour.

The combined effects weakened the ability of states to provide social services, regulate group differences and maintain social cohesion. The above exposed the fragile basis of national unity, perceptions of identity, and citizenship. These triggered off survival crises and long-drawn-out civil strife fought by factions contesting the state. The wanton violence, destruction, and seizure and exploitation of natural resources that ensued created complex humanitarian emergencies that fundamentally altered the orientation and motivation in warfare. It became difficult to distinguish combatants from non-combatants, acts of warfare from violent crimes or malfeasance as manifestations of human



instinct to survive.<sup>x1</sup> The fall-outs such as refugee inundation, cross border crime, cries for intervention and relief, quandary of the vulnerable, threats of pandemics, irredentism and fear of domino effect scourged the conscience of the West African public, obliterated the distinction between stable and unstable states, and made the crises regional. The initial superpower and international (organisations) intervention fatigue that characterised the post US debacle in Somalia placed the ballast of managing the smouldering civil strife on ECOWAS, in particular, and a constellation of NGOs, in general.

The crises catapulted ECOWAS into international limelight as it conceptually and structurally responded and managed the crises in far-reaching and novel ways – the response to the crises was far-reaching and novel as there was a transformation of ECOWAS from a purely economic organisation to a security-oriented body. The violence has abated dramatically and the security situation has somewhat stabilised. The sub-region has equally seen significant improvement in the economic and political domains. It has witnessed a number of successful transitions to democratic rule; and unconstitutional change of governments has been outlawed. Yet, the most successful political and economic cases need being qualified.

Though the economic and political situations have improved, there remains wide gulf between the rich and the poor/formal and informal sectors. The dispensation of contemporary multi-party democracy has engendered sundry crises of its own and the

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<sup>x1</sup> Ken Ahorsu, *The Political Economy of Post-Cold War Conflicts in Sub-Saharan Africa*, *op. cit.*, p. x.

permissive conditions that served as antecedents to the 1990s civil strife still endure. The sub-region is witnessing a resurgence of *coup d'états* and low intensity factional violence abound wherever one looks in the sub-region. For most individuals and groups insecurity entails a crisis of social disintegration and struggle for daily survival at the lowest levels of subsistence. The permissive conditions for frustration, potentially, serve as fertile grounds for transnational security threats to flourish. This is especially so in the light of post September 11, 2001 challenges, and the new strategic importance of the sub-region that makes it 'a legitimate target' for and vulnerable to transnational threats.

## A Security Community

The civil strife of 1990s in the West African sub-region served as the harbinger that transformed the Economic Community of West African States (ECOWAS) from purely an economic integration project into a ground-breaking security organisation and security community.<sup>xii</sup> ECOWAS has since built impressively upon its tenuous 1981 Protocol on Mutual Defence Assistance-based ECOMOG experience in the Liberia crisis. The present peace and security regime, ECOWAS Mechanism for Conflict Management, is based on the 1993 Revised ECOWAS Treaty that incorporates and

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<sup>xii</sup> *The conceptualisation of security community is based on Karl Deutsch's pluralistic communities: a group of people or states that have become interdependent and integrated to the extent that there exists the assurance that they will not fight each other but combine their energies and resources towards peaceful resolution of their differences and other conditions that promote and sustain peace, security and development. See Adler, E., and M. Barnett, (eds.), Security Communities (Cambridge: Harvard University Press, 1970), p. 6.*

transcends previous protocols. It acknowledges the comprehensive nature of security and offers generic and elaborate conceptual and structural mechanisms for managing threats to the sub-region.<sup>xiii</sup>

The ECOWAS Mechanism for Conflict Management, when combined with the ECOWAS Protocol on Democracy and Good Governance can pass as a world-model for regional security. The ECOWAS Mechanism for Conflict Management is faced with many challenges such as the requisite political will, financial resources, and the gap between policy formulation and implementation. One of the most pressing, however often unarticulated, challenges to ECOWAS, for that matter governance generally in Africa, is the gulf of knowledge between elite and illiterate, and formal and informal sectors.

This challenge resonates in the exclusion of illiterates, underprivileged, and the informal sectors in the processes of policy formulation and implementation; and their mobilisation around issues and policies. The structural weaknesses of the sub-region coupled with the pervasive and diffuse nature of contemporary transnational threats make them often non-amenable to hi-tech weapon solutions. This makes mass mobilisation of the West Africans a *sine qua non* if the sub-region is to effectively and efficiently cope with their challenges.

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<sup>xiii</sup> It is not the intention of the paper to expatiate on ECOWAS security mechanisms. For readers who want further information on the ECOWAS mechanisms, there is a lot of information on ECOWAS security mechanisms on its website.

## An Emerging Geo-Strategic Region

The West African sub-region has overcome the early post Cold War storm of violence, even if perilously, and is gradually emerging as a geo-strategic region. Almost all the member states of the sub-region have successfully transitioned from widespread bloody military coup d'états and dictatorships to multi-party democracy, albeit the nascent challenges. Personal rule laced with egregious human rights abuse and impunity have given way to budding faith in rule of law, democratic and constitutional rule, vibrant media and civil society, as well as the principles that underpin it.

The sub region now enjoys political stability despite the appalling record of electoral violence and low intensity conflicts in parts of the region. The 2001 ECOWAS Protocol on Democracy and Good Governance that forbids unconstitutional change of governments have somewhat capped the spectre of coup d'états and aligned the sub-region's governance principles with the emerging global normative consensus.

President Barack Obama's, the first African-American President, first visit to sub Saharan Africa in July 2009 to the sub-region, particularly to Ghana, in my view reiterates the US and other Western nations' faith and support towards democratic governance in Africa. The visit was symbolic in recognition of institution and support for democracy in West Africa and intended to serve as catalyst for other sub-regions to spur other African countries and sub-regions to emulate and adopt democratic norms.

The sub-region has also become a major source of strategic natural resources such as oil, gas, and uranium. Ghana is the latest country in West Africa to strike oil and gas in commercial quantities. The expectations are that more oil and natural gas deposits will be discovered in other parts of the sub-region. Although the volume of oil discovered in the sub-region is small when compared with those found in the Middle East and Venezuela, the volatility that characterises the Middle East and the resurgence of radical leftist governments in Latin America, makes alternative sources of oil supply very strategic. Besides, the sub-region shares a contiguous continental shelf with other important oil producing nations such as Equatorial Guinea, Cameroon and Angola.

The implications are that any major instability along the Gulf of Guinea will inevitably affect commercial activities along the South Atlantic Ocean. The sub region has consequently become a new geostrategic zone that has to be secured so that it does not become an unstable region. With new-found political stability and natural resources, the sub-region has equally become the destination for direct foreign investments. Hundreds of millions of dollars are now being invested in Ghana in the oil sector and its related industries. On the other hand, the sub-region has also become a major transit route for South American narcotic drugs to North America and Europe.

Given the enduring political instability, presence of piracy and kidnapping in the Niger Delta, maintaining security along the Gulf of Guinea has become a veritable geo-strategic concern. The US Navy is presently partnering the Ghana Navy to patrol Ghana's sea in order to forestall any threats to investments, shipping routes,

and other Western interests. Conversely, for the same reasons, the region has become a 'legitimate target' to transnational threats, especially anti-Westerners that are looking for soft Western targets. The sub-region has, conceptually and structurally, one of the most profound and ambitious peace and security architectures in print. The reality on the ground, however, reveals that sub-national, national and regional criminal activities and threats to security have become more challenging. The various national security agents are simply not up to their responsibilities because of malfeasance, institutional lapses, lack of collaboration among the allied agencies, and resource inadequacies. The geopolitical and economic environment has changed significantly and is in profound disarray, increasing the liability of states. For the sub-region to be safe, peace and security have to be maintained on both land and sea in order not to create safe havens. The problem becomes clear when we examine the profile of contemporary threats to international peace and security.

## The Evolving Concept of Security

Security may be defined as the pursuit of rightful free will, core values and safety from danger or vulnerabilities that undermine or may undermine an entity or identity's wellbeing in time and space. Traditionally, security had been state-centred, and conceived largely in military terms and external to the state. It was concerned with the ability of states and societies (given and undifferentiated) to maintain their independent identity and their functional integrity against socio-cultural, political and economic forces of change that were perceived as antagonistic and inimical to their welfare.

Under *real politic*, a threat to security is determined purely in terms of national or regime interest.<sup>xiv</sup> By the early 1980s, however, there emerged a more comprehensive conceptualisation of security - what I call the merging of security and peace studies ideals; first as an intellectual enterprise, then, as a result of the preponderance of neoliberal policies, and later as a result of volatility, mainly civil strife, that characterised the early post-Cold War era. Since the 1990s all threats, especially internal threats, have been increasingly defined as threats to international peace and security.<sup>xv</sup> Issues that had hitherto been judged as internal and falling exclusively within the sovereign jurisdiction of individual states as enshrined in UN Charter Article 2 (7) have been qualified and are no longer sacrosanct. The leitmotif running through the changing concept of security is that dysfunctional governance, mainly in the developing countries, is a main source of civil strife; and that often governments constitute threat to their citizenry.

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<sup>xiv</sup> This definition is influenced largely by the works of Barry Buzan on security. However, while the main crux of Buzan's works was to demonstrate the changing and comprehensive nature of security, my definition echoes classical realist conception of security. This is necessary in order to demonstrate the changes that the conceptualisation of security has undergone. See Barry Buzan, 'Peace, Power, and Security: Contending Concepts in the Study of International Relations,' *Journal of Peace Research*, 21:2 (1984); and *People, States and Fear*, op cit. See also Forest L. Grieses, *Conflict and Order*, (London: Houghton Mifflin Company, 1977), p. 90.

<sup>xv</sup> See Philip Cerny, 'Neomedievalism, Civil War and the New Security Dilemma: Globalisation as Durable Disorder' *Civil Wars*, 1, 1 (Spring 1998); Schierup, 'Memorandum for Modernity? Socialist Modernisers, Re-traditionalisation and the Rise of Ethnic Nationalism' in Carl Schierup, ed., *Scramble for the Balkans*:

*Nationalism, Globalisation and the Political Economy of Reconstruction* (London: Macmillan Press, 1999); Manuel Castells, *The Rise of Network Society: Volume One of the Information Age: Economy, Society and Culture* (Massachusetts and Oxford: Blackwell, 1996); and Mark Duffield, *Global Governance and New Wars* (London/New York: Zed Books, 2001).

In the absence of the Cold War ideological divide, the embrace of neo-liberal ideas has engendered the emergence of semblance of global consensus on normative issues. Johan Galtung's conceptualisation of dysfunctional social structures as influential objective conditions that constrain the development of human potentiality and permissive conditions for the gestation of conflict and insecurity (structural violence), hitherto perceived as revolutionary, has become central to today's security jigsaw. The security equation now concerns not only the ad hoc termination of the manifestation of threats but also the empowerment of human agency, especially civil society, to discover the permissive structural conditions that engender the threats and build good governance institutions to prevent, manage and resolve them. Good governance and sustainable development are now largely seen as the panacea for peace, and security.

The changes reflect an expansion of the traditional state centred concerns to include human security, social capital, and ecological concerns. Individuals, people, and groups have become the focal point of today's security concerns in a broad, multi-faceted, people-centred, eco-friendly, governance-rooted, collaborative and multi-agency paradigm. While not jettisoning state and physical safety concerns, it amplifies objective conditions for peace and security such as health care, education, skills, human rights, food security, due processes of law, ecological balance, (good) governance, and institution building as safeguards.<sup>xvi</sup>

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<sup>xvi</sup> Sagaren Naidoo, 'A Theoretical Conceptualization of Human Security,' UNESCO-ISS Expert Meeting, Pretoria (July 23-24 2001); and, Sadata Ogata, 'Globalization and Human Security' Weatherhead Policy Forum, Columbia University, (March 27, 2002).



The changed conception, core values, collaborative approach, and interconnected nature of security are captured by President Barack Obama:

*This is the simple truth of our time when boundaries between people are overwhelmed by our connections. Your prosperity can expand America's prosperity. Your health and security can contribute to the world's health and security. And the strength of your democracy can help advance human rights for people elsewhere.<sup>xvii</sup>*

## Transitional Threats to Peace and Security

In a post September 11, 2001 world, the definition of security encompasses both the traditional military and state centric notion of protecting sovereignty and the idea of human security or social capital.<sup>xviii</sup> Threats have since become more diffuse and pervasive, transcending national and geographical boundaries. Aided by the forces of globalisation, (some) issues bordering on criminality, militarism, governance, development, public health, individual, and environment concerns are now defined as transnational threats to peace and security. Threats such as civil strife, environmental threats, pandemics, terrorism, and drug trafficking, by their intrinsic nature are able to threaten whole

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<sup>xvii</sup> President Barack Obama's speech to the Parliament of Ghana during his official visit to Ghana in July 2009.

<sup>xviii</sup> While the new definition of security emphasises political values, social and economic imperatives, it equally recognises state and national security as essential component and indeed precondition for the wider definition of security. It is capable of being integrated into (rather than being isolated from) the overall development planning process, thus fostering a generic approach to security.

regions, undermining their political, social and functional integrity, as well as the well-being of the citizenry.<sup>xix</sup> These threats, by their nature, do not present a crisis focal point for governments and other regulators to design plans by which they can isolate and focus their energy.

They are often driven by non-state actors, who have little concern for global governance, legal norms, and peaceful resolution of issues. They intentionally try to elude or undermine official sanctions. Contemporary conceptualisation of security essentially eliminates the tagging of threats into local, national, regional and international divides. Threats to peace and security are defined in holistic and universalistic terms. The management of threats to peace and security equally transcend the responsibilities of individual states and traditional security agencies. It calls for comprehensive, collaborative, multi-faceted, multi-agency, and people-centred approach rooted in vigilance, good governance and sustainable development at all levels.

Transnational threats from such diverse sources as youth marginalisation and alienation, state collapse, civil strife, warlord politics, war economies, proliferation of arms, redundancy, human trafficking, mercenaries, private armies and militias, natural disasters, piracy, and terrorism. Other transnational challenges emanate from refugee flows, illegal migration, drug trafficking, cross border crimes, environmental degradation, rogue companies, ethnic and religious militancy, terrorism, pandemics, piracy, and cyber crime. There is no 'silver bullet' for contemporary

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<sup>xix</sup> *What constitutes transnational threats is well articulated below under the sub section on What should be taught.*

transnational threats. What is indispensable is knowledge that fosters change, choice and perpetual vigilance.

## What is Peace Education?

Peace education is a normative orientation or process of well-ordered cognitive processes of imparting knowledge and skills for analysis, and understanding of the processes of frustration, human conduct and (structural) violence. It is a clear value-laden enterprise of alleviating dysfunctional aspects of violence. It is a creative mode of obtaining altruistic *knowledge*, and *values* about any dysfunctional phenomenon or set of goals. It entails developing and attaining alternative *skills*, *attitudes*, *values* and empathetic *behaviours* to creatively live in harmony with oneself, with others, and the natural environment in symbiosis.

A good definition of peace education should necessarily meet the standards of *positive peace*: harmony, justice, peace, well-being, wholeness within the individual, community and among nations based on ecological wholeness, redistribution of wealth, race, sex and gender equality, human rights, good governance, and transformation of exploitative structures and the establishment of enduring systems of peace. It aims at transforming structures that perpetuate exploitation, domination, and dependency as sources of frustration and violence, through prescriptive social engineering. It seeks normative conversion, alternative lifestyles, and establishment of harmonious and non-exploitative structures, especially determination to pursue the goal of social justice even

in the absence of violence.<sup>xx</sup> It is multi-disciplinary in approach. For our purposes, from the standpoint of the management of contemporary threats to West Africa, peace education is exhorting a dedication to peaceful co-existence as an established disposition and enhancing the self-assurance of the individual as an individual agent of peace; and acting together as a community to safeguard the safety of the community and its constituents.

It borders on informing participants/citizens on the costs of violence and social injustice; the values of peaceable and just social structures and lifestyles, and striving to sustain or build up such structures.<sup>xxi</sup> It entails management of threats through analytical problem-solving processes, and prevention of violence through awareness, vigilance and avoidance policies at all societal levels. It involves a change of focus and logic in the philosophies and policies from the traditional focus on existing rational institutions and their preservation that engender frustrations, indifference, threats and violence to focus on structural and behavioural sources of peace, and social justice. The Kantian notion of duty;<sup>xxii</sup> and the virtue ethics, consequential ethics, and the ethics of care provides the philosophical bases of peace education.<sup>xxiii</sup> It epitomises the fact that peace education is not only concerned with the individual but concerned and linked with every facet of life, society, and the physical environment as

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<sup>xx</sup> *In real life the dynamics of peace is often relative, circumstantial, normative, and idiosyncratic in nature.*

<sup>xxi</sup> See Page, James S., *Peace Education: Exploring Ethical and Philosophical Foundations*, (Charlotte: Information Age Publishing; 2008), p. 189.

<sup>xxii</sup> Calleja, Joachim James, 'A Kantian Epistemology of Education and Peace: An Examination of Concepts and Values', *Unpublished PhD Thesis, Bradford University (1991)*.

<sup>xxiii</sup> Page, James S., *Peace Education: Exploring Ethical and Philosophical Foundations*, (Charlotte: Information Age Publishing; 2008).

a whole. For example, concerns for eco-friendly and sustainable exploitation of the environment is inextricably linked with food security and human security.

A major requirement of peace education is the critical exploration and acquisition of knowledge on a given phenomenon, environment, or set of goals, however defined, for example, the exploring linkages between drug-trafficking, crime, security and public health delivery. Next is developing a spectrum of focal themes. This may be a recurrent or intractable problem, expected value-laden goal, manifestations of a phenomenon or exigencies of the future. Observations and data collected on the focal point facilitate and inform the understanding of the structures, relationships, and behaviours. These, in turn, reveal the features of relationships, institutions and environment that cause frustrations, threats, and denial of the fulfilment of basic human needs. The knowledge and understanding of an environment enables an articulation of alternative philosophies and values to exploitative structures, institution failure, unequal relationships and manipulative behaviours.

With an understanding of a phenomenon comes a conception of *peace*, or the *common good*. Peace or the common good of a household, community, society, or the world is what is accepted, given, desired and aspired for and promotes the altruistic well-being of a collectivity. This is often based upon the history, structure, cultures, and aspirations of a people or given environment. It may revolve around frustrations, needs or sources of threats, aspirations and goals, or serve as a solution to such exigencies. It seeks to answer the questions: Where are we coming from? Who are we? Where are we? What is retrogressive?

What is progressive? What are our aspirations and goals? Where do we go from here? How can we best achieve this goal? The definition of an environment's needs and aspirations or *common good* constitutes the nervous system around which to relate and craft the spirit or message of peace education.

Ultimately peace education aims at facilitating critical consciousness and transforming worldviews of a target group, community, society or region towards a culture of peace and non-violence. It rests on developing a critical understanding of root causes of threats and violence, and empowering participants to devise creative means preventing and managing threats to make their environment and lives better.

Peace education thus concerns the promotion of peace, altruistic social values, prevention and deterrence of crime and violence, peaceful resolution of disputes, collective decision-making, and creativity for harmonious interdependence through knowledge, vigilance, cooperation and collaboration.<sup>xxiv</sup>

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<sup>xxiv</sup> *I am by no means calling for an egalitarian society. For example, one of the greatest strengths of Japan and its communities is the wide dissemination of information through the workplaces, community newspapers, tea ceremonies, civil society groups, the news and electronic media, and temples, among others. Despite the depth of knowledge dissemination and awareness of the Japanese society, it is not an egalitarian society.*

## Who should be Taught?

The fundamental idea is to bridge the gap between the formal and informal sectors of the West African society.<sup>xxv</sup> There is the urgent need to close the gulf by ringing sundry experiences of super-ordinates, ordinates, and sub-ordinates in amalgamation to find common solutions to contemporary threats that all can identify with and call their own. Peace education is a creative approach to problem-solving, one which envisages not a top-down or bottom-up approach to peace and security but a more inclusive or all-inclusive approach.

Threats to peace and security are diffuse and affect all individuals and segments of the sub-region. As such, it needs the energies of all to safeguard the sub-region. An effective and efficient design of peace education should necessarily involve all people at all levels of the sub-region: teachers, traditional institutions, health workers, hospitality industry, transport workers, the media, self-employed, farmers, fishermen, traders, civil and public service, and security agencies. For such a large target group there may be the need to start with creation of peace constituencies at various levels of the sub-region, followed by trainer of trainees' programmes through a variety of creative methodologies, and, eventually, reaching out to the entire West African public.

It goes without saying that this calls for government, private business and civil society cooperation and collaboration with traditional authorities. Such an education takes place across

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<sup>xxv</sup> *One of the main problems of sub-Saharan African societies is the gulf between the formal and informal sector, and policy-makers and those affected by the policies, especially rural dwellers and illiterates.*

all modes (formal, non-formal, informal) and levels, relying on participatory, creative, and critical pedagogies.<sup>xxvi</sup>

The orthodox 'top-down approach', whereby the teacher is always the source of knowledge, should largely be avoided.

For a creative peace education programme to be beneficial there is the need for dialogue between the coordinating institutions and agencies, on the one hand, and target groups, civil society, students, parents, and teachers, on the other, to make it participatory, collaborative, and successful. The inherent assumption is that each group is knowledgeable and has valuable contributions for success. Participants are facilitators of education outcomes; as such their involvement is fundamental to the programme's success.

It entails taking school to the target groups and participants. The processes must be incorporated into the lives, professions, practices, aspirations, goals, communities and societies of participants. It takes the form of durbars, camps, workshops, demonstrations, discussions, debates, and incidence examinations. The perspectives of participants are as important as those of the facilitators to make it creative, interesting, and relevant to all involved. It must improve the lives of individuals, communities and societies involved through recognition, respect, empowerment, creativity, increased production, and positive social changes. The basis of empathy should provide the target groups with the tactics to effectively respond to the needs and emotions of others by encouraging empathy through symbiotic interaction.

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<sup>xxvi</sup> See Groff & Smoker, *From a culture of violence to a culture of peace* (Paris: UNESCO, 1996).



To make it sustainable and legitimate, all, especially leadership, needs to live and practise the values communities dream. It should be a process of moulding citizens embedded with independent thinking through learning to recognise, confront, prevent, and overcome threats and challenges of the 21<sup>st</sup> century.

## What should Be Taught?

As stated earlier the curriculum of peace education covers a wide gamut of topical issues. These include war and armaments, international cooperation, environmental issues, communication skills, conflict resolution mechanisms, democracy, human rights, diversity and peaceful co-existence, development, gender and race equality, health issues, and (work) ethics, among others.<sup>xxvii</sup> In essence, there is no *rue de rigueur* than that they must be in consonance with the essentials of *positive* peace. The programme should be comprehensive enough to make the attainment of the *common good* feasible and holistic. An effective peace education programme for a structural crises and security complexes sub region, such as West Africa, needs to take into cognisance its history, foundations, and structural weaknesses and how these affect the livelihood and behavioural attitudes of its citizens.

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<sup>xxvii</sup> *Spiritual dimensions are sometimes covered under peace education. The paper however avoids covering spiritual dimensions. On focal themes of peace education see Groff, L., and Smoker, P., 'Creating global-local cultures of peace,' Peace and Conflict Studies Journal, 3, (June, 1996); Harris, I.M., 'Types of peace education,' in A. Raviv, L. Oppenheimer, and D. Bar-Tal (Eds.), How Children Understand War and Peace (San Francisco: Jossey- Bass Publishers, 1999), pp. 299-317; Johnson, M.L., 'Trends in peace education,' ERIC Digest. ED417123, (1998); Swee-Hin Toh. 1997. "Education for Peace: Towards a Millennium of Well-Being," Paper for the Working Document of the International Conference on Culture of Peace and Governance (Maputo, Mozambique, 1-4 September, 1997)*

These often serve as fault-lines that render the sub-region susceptible to factionalism, structural violence, marginalisation, poor, gullible to violence, and vulnerable to security threats. It is, therefore, vital to conceptualise the structural weaknesses and contemporary transnational threats as inter-related and mutually-reinforcing.<sup>xxviii</sup>

For example any peace education design to combat terrorism must necessarily incorporate focal themes designed to address the structural crises such as poverty.

For adverse repercussions such as disarticulation between state and society, the widening gap between the formal and informal sectors, sub-nationalism, recalcitrance, and violence are largely due to the absence of a social contract between the state, rulers and the ruled. It is only when the West African (security) public understands the structural crises and its manifestations that progression can be made to address contemporary security issues.

The programme must also aspire to unite the West African public around *common goods* – peace, security, and stability. It must mobilise the people and create the awareness that while they may yet differ in nationality, ethnicity, gender, and idiosyncrasies, their fate are intricately tied together. A threat issuing from an individual, group, state or outside the sub-region affects them all and the resolution to that threat or for that matter any other threat, depends on the efficient collaboration and mobilisation of

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<sup>xxviii</sup> *The point being made here is that the structural crises serve as permissive conditions that render the sub-region more vulnerable to transnational threats. Again, if the design is not comprehensive enough and the participants are only enlightened on their rights without an accompanying explanation of their responsibilities and the limitations of the African state, it is most probable that more violence may abound.*

all members, however defined, of the sub-region.

A good programme should also explain and demonstrate that peace, security, development, and sustainable environment, though separate entities in their own rights, are inter-linked and inseparable. A failure or threat to one necessarily threatens the others. For example a cyber crime against a potential investor denies a probable investment that may employ hundreds. The resultant unemployed may become criminal gangs that may threaten the peace and security of West Africans in myriad ways.<sup>xxix</sup>

An essential upshot of peace education is that it does not only explain issues but also points to probable ways of addressing frustrations. This leads to creativity and greater productivity.<sup>xxx</sup>

A good programme of alternatives generates creativity, industriousness, and higher productivity. It is only when a programme incorporates or achieves this element of creativity and greater productivity that it can draw legitimacy from the public or target group involved.

It is, therefore, plausible that a good starting point should be the historical foundations and their ramifications for West African states and people. A synthesised number of issues, such as a greater understanding of the international political economy, eco-friendliness, communication skills, non-violence, conflict resolution mechanisms, democracy, human rights awareness and promotion,

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<sup>xxix</sup> Another way to look at this is that in the absence of peace and security the sub-region cannot attract foreign direct investment, the contemporary engine of growth.

<sup>xxx</sup> The evidence, overwhelming shows that it is the elite that preponderantly benefit from reform programmes. However, for example, tree-planting should benefit the poor who are employed to reverse desertification and drought.

tolerance and peaceful coexistence, gender equality, and work ethics with a view to promoting West African citizenship based on the concept of world citizenship should be part of the curricula. The essence is a focus on processes of worldview transformation. On the historical antecedents to the West Africa state and its structural crises, the idea is to have an empathetic view of history and perceive heterogeneity and appreciate multi-ethnicity, as well as multi-culturalism as fonts of vitality and recreation instead of sources of antagonism leading to social disintegration and violence. The synthesised focal themes of tolerance of diversity; and conflict resolution should focus on behavioural symptoms of intolerance, training entities to resolve their disputes peacefully, responsibility for one's actions, and altruistic decision-making.

The essence is to alter negative beliefs, attitudes, behaviours, and frustrations at all levels of society to positive ones.<sup>xxxii</sup>

On democracy and good governance, the focus should be on transforming dysfunctional political processes that result in frustrations, violence, and insecurity. Focus on democracy and good governance is to highlight the indispensability of good governance to promoting peace, security, harmony, and development. It is also to emphasise that good governance leads to democratic or liberal peace both internally and internationally as increased participation in governance, and faith in and practice of tenets of democracy reduce dysfunctional aspect of conflicts. One of the main threats to peace and stability in contemporary West Africa is multi-party elections sundry violence.

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<sup>xxxii</sup> Van Slyck, M.R., Stern, M., and Elbedour, S., 'Adolescents' beliefs about their conflict behaviour,' in A. Raviv, L. Oppenheimer, and D. Bar-Tal (Eds.), *How Children Understand War and Peace*, San Francisco: Jossey-Bass Publishers, 1999, pp. 208-230.

What needs to be emphasised is that a “democratic society needs the commitment of citizens who accept the inevitability of conflict as well as the necessity for tolerance.”<sup>xxxii</sup>

Critical thinking processes, brainstorming, debate, and coalition-building should be incorporated into the curriculum, likewise the promotion of the values of freedom of speech, individuality, tolerance of diversity, compromise, rule of law, institution building, conscientious objection, and cooperation. While promoting the management of political violence by adherence to democratic temperance, the ultimate point is to promote a positive-conflict orientation by training the participants to perceive frustrations and conflicts as an opportunity for creativity and progress.

Human rights themes should centre on enhancing ethno-graphic, national and international values, policies, laws, and practices that promote humanity with the view to fostering a peaceful regional and global community. The import is to typically foster a regional dedication to ‘structural peace,’ and a world of harmony in which all, irrespective of the ethnicity, sex, social status, and religion can enjoy their civil rights and exercise their responsibilities in dignity without fear or favour. Essentially, the design should be contextualised both in terms of frustrations and solutions. The participants must familiarise themselves with ethnographic, national and international conventions and declarations of the United Nations system.

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<sup>xxxii</sup> U.S. Department of State Bureau of International Information Programs, ‘The culture of democracy’ accessed from <http://usinfo.state.gov/products/pubs/whatsdem/whatdm6.htm> cited in Wikipedia, Peace Education.

The most important is to close the gulf between theory and practice, policy formulation, implementation and evaluation, and to create awareness of policy prerogatives and means of realisation. The watchword is to avoid piecemeal approach to peace education in structural crisis environment such as West Africa. The design should be holistic since sources of frustrations are often interconnected and overlap. For,

*“Human rights education does not work in communities fraught with conflict unless it is part of a comprehensive approach ... In fact, such education can be counterproductive and lead to greater conflict if people become aware of rights which are not realised. In this respect, human rights education can increase the potential for conflict”<sup>xxxiii</sup>*

As stated earlier, to prevent dysfunctional outcomes, the programmes must be comprehensively designed in combination with aspects of conflict resolution, good governance, ethics, communication, anger management, alternative modes of livelihood, and healthy living. The evolution and adaptations that peace education curricula have undergone in contemporary times are largely the result of emerging normative consensus and profile of challenges that have sharply redefined the security landscape.

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<sup>xxxiii</sup> Parlevliet, M. quoted in Pitts, D, 'Human Rights Education in Diverse, Developing Nations: A Case in Point – South Africa,' *Issues of Democracy*, 7 (March, 2002), accessed from <http://usinfo.state.gov/journals/itdhr/0302/ijde/pitts1.htm>

One of the main challenges to stability in West Africa, and for that matter sub-Saharan Africa, is rapid population growth without corresponding economic growth and opportunities such as education, employment, and safety. The demography shows that the youth are in the majority and are one of the most marginalised, restive and reactionary in the sub-region.

The extant literature on post-Cold War civil strife in Africa has witnessed an emerging paradigm that explains civil strife as emanating from the social origins, anti-social nature, militancy, underclass and rebellious culture of the youth.<sup>xxxiv</sup>

Today's globalisation has compressed the world in time and space. The youth in Africa are critical of their relative deprivation *vis-à-vis* the ostensibly opulence of the youth of the West and the elite in Africa. Their dreams cannot be realised. They often become frustrated and alienated from society. Often, they serve as a cheap source of recruitment for the elite, especially politicians, who exploit their gullibility to harass and terrorise their opponents by valourising violence, especially, for political expediency.

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<sup>xxxiv</sup> See *The Economist*, 'Horror Story', 21 November (1992), p. 49. Robert Kaplan, 'The Coming Anarchy', *The Atlantic Monthly* Vol. 273, No. 2, (1994), pp. 44-76. David Kaplan, *The Ends of the Earth: A Journey at the Dawn of the 21st Century*. See Neil J. Savishinky, 'Rastafarian in the Promise Land: the Spread of a Jamaican Socioreligious Movement among the Youth of West Africa,' *African Studies Review*, 37, 3, (1994), 19 – 50; Ali El-Kenz, 'Youth and Violence' in Stephen Ellis (ed.) *Africa Now: People, Policies and Institutions* (London: 1996); Yewori Museveni, *Sowing the Mustard Seed: The Struggle for Freedom and Democracy in Uganda* (London: Macmillan, 1997); Alenssandro Triulzi, 'African Cities, Historical Memory and Street Buzz,' in Iain Chambers and Lidia Curti (eds.), *The Post Colonial Question: Common Skies, Divided Horizons* (London: Routledge, 1996); Mamdou Diouf, 'Urban Youth and Senegalese Politics: Dakar,' *Public Culture*, 8 (1996), 225 – 249; Bill Ashcroft, Gareth Griffiths, Helen Tiffin (eds.) *The Post-Colonial Studies Reader*, (New York: Routledge, 1995); and, Ranajit Guha, 'On some Aspects of the Historiography of Colonial India', *Subaltern Studies*, 1, (1982).

The breaking down of family bonds and other social safety nets has led to greater delinquency among the youth. The (veteran) youth fighters that participated in the Liberian Civil War and equally participated in the Sierra Leonean and Cote d'Ivoire civil wars are poised to seize the opportunity of civil strife in other places to eke out a living through violence. The role of the youth in contemporary civil strife in West Africa and increasing cross-border crimes has triggered off the debate whether they are villains or victims of society.<sup>xxxv</sup>

It is, however, obvious that youth marginalisation poses a threat to the sub-region; and the sound management of youth frustrations will reduce their gullibility and exploitation, and reduce their inclination to violence and fraud. This calls for greater engagement and development of youth-friendly policies to enhance political stability.

Any agenda to ameliorate youth delinquency should necessarily incorporate empowering parents and parenthood efficiency; social structures for youth education, recreation, and employment; and civil society oversight, and government policies. Marriage as a socio-economic institution has been faced with many challenges

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XXXV See Jimmy Kandeh, 'Ransoming the State: Elite Origins of Subaltern Terror in Sierra Leone,' *Review of African Political Economy*, 81 (1999), 349 – 366; 'What Does the Militariat Do When it Rules: The Gambia, Liberia and Sierra Leone,' *Review of African Political Economy*, 69 (1992), 387 – 404; Ibrahim Abdullah, 'Bush Path to Destruction: the Origin and Character of the Revolutionary United Front/Sierra Leone,' *Journal of Modern African Studies*, 36, 2 (1998), 203 – 235; Ishmael Rashid, 'Subaltern Reactions: Lumpen Students, and the Left,' *op. cit.*; Lansana Gberie, 'The May 25 Coup d'etat in Sierra Leone: A Militariat Revolt?' *African Development XXII 3/4* (1997), 149 -170; and, Patrick Muana, 'The Kamajoi Militia: Violence, Internal Displacement and the Politics of Counter-Insurgency,' *African Development XXII 3/4* (1997), 195 – 218.; Ishmael Rashid, 'Subaltern Reactions: Lumpen Students, and the Left,' *African Development XXII 3/4* (1997),



in recent times. There is the need for an appreciation of the problems it has been faced with and how best parents can bring up children, and provide for their needs in the absence of government support. Issues such as teenage pregnancy, reproductive health, single parenting, adult unemployment, alternate livelihoods, provision of social micro credit schemes, social infrastructure, and eco-friendliness, among others, have to be reappraised.

Civil society must work to complement the needs of parents and governments. The youth needs relevant educational programmes that explain the needs, difficulties, and opportunities of today and equip them with the necessary skills for earning legitimate living. It should also provide the youth with conflict management and peaceful co-existence skills. Governments must come up with youth-friendly policies, such as poverty alleviation programmes, and adequate budget allocations for youth programmes. As stated earlier, above all, governance must be guided by transparency, accountability, magnanimity, free and fair elections, rule of law and democratic temperance.

West Africa is a multi-ethnic, multi-lingual, and multi-religious sub-region. These differing and heterogeneous identities are some of the salient fault-lines along which factionalism and threats to regional stability occur. In order to address these objective problems of heterogeneity, the ethics of diversity, tolerance, and peaceful co-existence should be included in the curricula. These will help reduce and mitigate contemporary ethnic and religious fanaticism and the phenomenon of factional militias.

This calls for teaching empathy-invigorating mechanisms to reduce stereotyping, division and violence. When well-designed and implemented, it will address ethnic and religious conflicts, as well as reduce the likelihood of such sectional schisms being influenced and exploited by and for geo-political terrorist causes.

Contemporary growth in the indispensable use of computers and internet in all facets of life ambivalently offers great opportunities and poses great threat to the sub-region and the world.

Technically, the explosive growth in use of information systems for all manner of purposes has made provision of proper security vital. The question of effective and efficient provision and use of internet services revolves around the assurance of its uninterrupted availability, privacy, security, and integrity.

In West Africa, there is a proliferation of cyber crime. These internet frauds are compounded by the increasingly global nature of information systems, and the difficulty of tracing the fraudsters. The sub-region is ranked as one of the worst places for cyber fraud, with Nigeria and Ghana being the worst locales. The correlation between cyber crimes, security and development, especially in terms of attracting Foreign Direct Investments (FDIs) is self-evident. Credible investors will like to invest in a sub-region where fraud is widespread.

A growing harsh threat to security in Africa is the negative effects climate change on sub-Saharan Africa's ecology. Environmental degradation is linked to population growth, and human (economic) activity. The linkage between climate change and security in Africa portends harsh realities for Africa in the light of the numerous low-intensity ethnic, religious, resources, and governance conflicts. Africa is mainly susceptible to environmental

conflicts since it lacks the necessary technology to tame nature. Many societies are facing dwindling water resources, diminishing crop returns, rapid desertification, and sea erosion that are shrinking large parts of the region's carrying capacity. The signs are that the worst is yet to come. The inherent dangers are many. It may tip societies into economic and socio-political collapse when environmental conflicts attain political saliency. It is, therefore, important to improve upon the present education on the causes and effects of environmental degradation, eco-friendly living, and sustainable development. These should include the adoption of adaptive policies for future environmental conflict prevention. The effect of environmental change can be greatly minimized or amplified by prevailing circumstances of governance, poverty and resource administration. It is essential that people understand that some environmental threats may be irreversible.<sup>xxxvi</sup>

Unpredictable natural disasters are other forms of non-traditional threats to the sub-region. These are climate-related geo-physical phenomena such as storms, tidal waves and coastal erosion, flood, drought and increased hazard of bush fires, mudslide, and pandemics. Pandemics such HIV/AIDS are part of the new threats that have the potential of weakening the sub-region's social and economic development capacity functionally and psychologically. In the absence of curative remedies, HIV/AIDS, though not being the most fatal disease, is, perhaps, unparalleled in attracting

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<sup>xxxvi</sup> *The challenges of environmental threats are particularly challenging for limited goods societies and governments such as those of West Africa that lack the necessary resources to tame nature and for domestic political-economic reasons must focus on short-term problems than putative and futuristic environmental concerns. The dilemma and irony, however, are that such societies are most likely to suffer the brunt of such threats.*

global consideration and mobilisation as a trans-border pandemic, threat to reproductive health, and emotional leisure. The threat and impetus to act is most urgent especially in the sub-region, where public health and preventive culture is less developed.

Its pandemic impact and ravages aggravate the vulnerabilities of the most vulnerable groups. Interventions must amplify the need for and practice of alternative and preventive sexual behaviours that can largely mitigate the effects of the pandemic.

The campaign against the spread and effects of HIV/AIDS should involve personal, communal, organisational, and worldwide range of behavioural changes and governance agencies.

States and regional organisations must activate their public health systems, with preventive public health education as the fulcrum of change. In tandem, local authorities must facilitate various support facilities for HIV/AIDS patients and caretakers. Public education must aim at eliminating stigmatisation and promoting tolerance of the infected. At the grassroots, afflicted individuals should be taught the principles of healthy living with HIV/AIDS.

Climate-related and geo-physical phenomena of natural disasters are global in nature and afflict all regions, countries and peoples without discrimination. They cannot be completely forecasted, and prevented. However, besides cause and effect dimensions to natural disasters, the gravity of most natural disasters are being exacerbated by human activities, and can be prevented through eco-friendly development.

Their effects can be greatly reduced through preparedness for natural disaster management. The sub-region lacks the necessary technology to tame nature and a culture of preparedness for disaster management. These deficiencies call for education

on the culture of prevention, preparedness, quick response, strategic thinking and regional cooperation. Disaster risk reduction strategies should provide for awareness campaigns, training, advocacy, planning, and the provision of material and psychological resources against such disasters. Piracy, a pervasive maritime insecurity, poses a significant threat to the sub-region's security. Maritime trade routes around the Niger Delta and the rest of West African's coast's maritime resources that are indispensable to its sustained development are threatened by robbery on the high seas and along the coast. This threat has potential ramifications for the economic development of the sub-region. Lack of law and order ashore will inevitably spill over into the maritime domain, while lack of maritime security will conversely generate lawlessness ashore. When security on dry land is secured, pirates will have no safe haven and would be forced to abandon their trade.

To attract and sustain the commercial interests of transnational corporations operating in the littoral areas along ECOWAS, protection and secured passage for shipping is paramount. This is particularly important presently when there is renewed strategic focus on Africa. Given the experience of Nigeria's oil industry, especially its difficulties in the Niger Delta, there is the need to prevent Ghana from experiencing same, given the oil-find, by sensitizing the citizens about the challenges of the oil industry. Since the end of the Cold War trafficking in humans has exponentially grown and become one of the most lucrative sources of global criminal income. It is also closely linked with other transnational criminal activities, such as slavery, prostitution, money-laundering, document falsification, drug and arms trafficking, and international terrorism, among others. The United

Nations defines human trafficking as the “movement of people through violence, deception or coercion for the purposes of forced labour, servitude or slavery-like practices.” It is a form of slavery because the victims are forced to work under inhuman and undignified conditions and receive remunerations against their will through deception and coercion. The illicit trade is flourishing on the back of avarice of the perpetrators, and as a result of especially the deteriorating economic situation in the developing countries. In West Africa the high incidence of population growth, low use of contraceptives, and acerbic poverty, besides their criminal manifestation, some parents knowingly and willingly sell their children for paltry economic gains. Human trafficking has mental, physical and emotional effects on individual victims and their families.

This egregious crime undermines human security and poses threats to border integrity. Trafficking in women and children for prostitution poses threats to human health, through the spread of sexually transmitted diseases. It is also believed that many of the world’s major traffickers are connected to organised crime groups, which may use the proceeds to fund other criminal activities such as terrorism.

A variety of groups engage in criminal and/or violent transnational behaviour. Distinction can be made between activity that is considered criminal around the world, and activity that is claimed by those undertaking it as ensuing from political grievances. In reality, however, the distinction is often blurred. Most of the time criminals claim to be fighting for political motives but commit reprehensible acts such as torture or maiming against vulnerable children and women that have nothing to do with politics.

Whether designated as warlords or militias, such subversive groups are often linked with rogue companies and other criminal organisations that are often engaged in illicit trafficking in arms and in drugs. These criminal organisations exploit state weaknesses and the absence of law and order to create a situation of an enduring order. Illicit financial flows can be massive and unpredictable. Criminal organisations promote money-laundering, which threatens the integrity of the banking sector, stock markets and other financial institutions. The foregoing has become so pervasive through triangulation that even the most powerful countries cannot boldly assert that they do not serve as transits for smuggling and money-laundering. Illegal organisations are so well-organised, mobile, and often a step ahead of enforcement regimes. They are more likely to move into new territories or shift the patterns of their trade once they are detected. Illegal drugs, money-laundering, and terrorism call for public education to create greater awareness and seal loopholes that may serve as a safe haven for illegal activities. They also call for transnational police collaboration and extraterritorial jurisdiction over criminals and support for international treaties and UN resolutions fashioned to deal with transnational crimes.

## Advantages of Peace Education

The ultimate objective is to produce public-spirited citizens, informed citizens, accountability, and to empower civil societies that are necessary for engendering and sustaining a culture of peace. The enormity and feasibility of such an enterprise look awesome and daunting. The inclination of some will be to ask if such a programme, while not doubting its benefits, is feasible in a

sub-region of structural and behavioural crises like West Africa. I argue that it is worth trying given the potential benefits therein. It is only such radical and creative plans that can transform and transcend Africa's structural crises and unite its people around common goods to jumpstart its sustainable development. The budding and ominous corollaries of contemporary threats to the sub-region given its vulnerabilities are so overwhelming that it calls for unity, cooperation, and collaboration among all segments of the sub-region. Peace education potentially, when well-organised, has the ability to improve the sub-region's structural weaknesses; for recognition, perception changing knowledge, and empathy are very formidable uniting factors.

Structural weaknesses and group differences are some of the main sources of schism in the sub-region. Peace education will help improve integration and articulation of state and society, especially in terms of social cohesion within individual states and the sub-region as a whole. Given the threats, greater social cohesion within the sub-region will bolster the sub-region's social capital and reduce its vulnerability. The recognition and integration of the various segments of the region's states will help reduce the urban-rural divide and assimilate the formal and informal sectors for a common goal of a more secured sub-region.

Peace education will improve the consciousness of the West African public about peace, security, and development, especially on how they are interdependent and inseparable today. Individuals, communities and societies will be abreast with issues of security, especially transnational security threats, and how best to address them in the knowledge that no one person or country is self-sufficient in addressing these issues except in collaboration.



The knowledge acquired will help individuals, groups, communities, and the sub-region to mobilise and form alliances, both self-help and public-related, around issues. The various segments of the sub-region can build upon this new-found awareness and skills, and build early warning preventive systems, community security, and other forms of collective regimes. In both the short term and the long run, security management will be cost effective and efficient as it is built upon human knowledge, consciousness, vigilance and collaboration than on sophisticated technologies that are often ineffective in managing transnational threats. Knowledge is generic and awakens human conscious and quest for self-actualisation.

A well-organised peace education programme has the potential of spurring individuals and groups onto self-actualisation in other endeavours of life. The education and new-found need to mobilise and amalgamate around issues will invariably improve governance at the local, national and regional levels. It will confer greater legitimacy upon governance institutions and governments. Once people and groups are recognised, honoured, and amalgamated to brainstorm and partake in decision-making on issues that affect them, citizens, their communities, societies and sub-region will reciprocate this goodwill by becoming more public-spirited and proactive in other issues such as governance and civil activities that effect their self actualisation.

This will lead to a new 'social contract' of goals, responsibilities and the way forward for each stratum of society and the sub-region as a whole. Needless to add that, this will most probably jumpstart the sub-region's socio-economic development. It will also help address concerns for the environment and

its ramifications for future generations through sustainable development. Regional stability will win foreign direct investors' confidence to invest in the region. Investors in the region's booming natural resources industries will be more willing to plough back their earnings in the region and thereby reduce transfer-pricing and capital flight. Indeed, a well-thought out peace education will reduce not only transnational threats to security but will reduce petty and cross border crimes, civil strife, religious militancy, factionalism, youth delinquency and create a helpful milieu for all other legal and fruitful human ventures to thrive.

## Conclusion: Conditions for Success

Peace education has a great promise for a greater integration and unity of West Africa. It offers, perhaps, the best solution for overcoming the enduring structural weaknesses and factionalism that West African member-states are often susceptible to. A well-conceptualised, planned, resourced, and implemented programme has the potential of improving West Africa's social cohesion, articulation between state and society, social capital, peace and stability, and related set of social values to facilitate the confrontation of contemporary threats to the region and jumpstart its sustainable development. The successful planning, implementation and realisation of peace education dividends, however, are not mechanical. Success primarily depends on the availability of the necessary political will, diligence, and resources, especially governments' will to stay on course.

Governments and other decision-makers have to exercise greater tolerance, form more inclusive coalitions of leadership, embrace accountability and transparency, rule of law and due process, protect the tenets of democracy and human rights, initiate viable poverty alleviation programmes, empower civil society, and work towards ethnic, religious and gender equality and fair distribution of national development. All West African citizens, especially governments and others in leadership positions should live and practice what they teach and lead by example.

It calls for building and resourcing reliable governance institutions; institutions that are built upon the rule of law and uphold norms, and values of due process. It calls for reinvention of communal roots of empathy and public spiritedness, informed by greater dialogue between communities, governments and the people, as well as sub-regional leaders and organisations. The West African public, especially the informal sector and the poor, will reciprocate and unite behind their leaders at all levels only if leaders are transparent, accountable, magnanimous, progressive, and lead by good example. Sub-Saharan Africa suffers from legitimacy problems mainly because of lack of social contracts between rulers and the ruled.

Peace education potentially will induce a new nationalism and social contract between governments and the governed.

A great emphasis has to be laid on restructuring the educational systems of the sub-region. It should be tailored to meet its contemporary socio-cultural, political, and economic exigencies of contemporary times.

It should entail changes in the pedagogy of teaching. Emphasis of peace education must be placed on training the youth, especially children, to prepare future generations to be equal to the challenges of the 21<sup>st</sup> century. The traditional security institutions need to be restructured to make them especially people-friendly and adept to the machinations and cunning designs of criminal organisations. The 'force' designation and inclinations of the security forces should be amended to reflect 'service' to society. The law enforcement agencies, especially the judiciary, must adapt to mirror the spirit and aspirations of the changes envisaged by communities, societies and the sub-region. Equally, there is the need for positive changes in the international arena since another source of vulnerability (namely the differential impact of the global political economy, which generates a set of constraints and enablement in the sub-region) is external to West African states.

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# International Crime in Internal Armed Conflict: An International Approach to the Human Rights-Justice Question in Africa

*By Mr Erasmus Ndemole Migyikra*

## I. Introduction

The presentation will look into international crimes in internal armed conflict in Africa and the issue of international human rights and humanitarian law in the African conflict states which have led to the establishment of international tribunals and courts to handle specific crimes and situations under international law. It will examine the indictment and prosecution of heads of states before international courts and tribunals, e.g. Charles Taylor, Pinochet, Milosevic, and Omar Al Bashir.

The paper focuses on the international community's interest *vis-à-vis* the involvement of the International Criminal Court (ICC) to deal with international crime and justice issues in Africa. It will also critically analyse the international community's involvement and taking the necessary steps in protecting the 'protected persons' (civilians) of fragile states who suffer egregious and systematic campaign of atrocities.

The research further examines the implications and the indictment of Congo, Central African Republic, Northern Uganda, Kenya and Sudan situations, including the President of the Republic of Sudan for committing crimes against humanity, war crimes and genocide such as extermination, rape, torture, looting and destruction of property of civilians as well as the state's failure in its obligation to protect its citizens. Besides, this paper explores immunities in international law and examines President Bashir's immunity as the incumbent President of Sudan and non-signatory state to the Rome Statute of the ICC.

## II. Modern Peace, Justice and Institutional Building

Looking at international approaches to human rights and justice question in Africa, it is worth noting that the term peace-building was widely used after the 1992 Agenda for Peace tabled and championed by the United Nations (UN)<sup>xxxvii</sup>. It involves a full range of approaches and processes needed towards more sustainable, peaceful relationship, governance modes and structures. It also includes building institutions – legal and human rights institutions – justice, rule of law and accountability institutions and mechanisms, etc. These processes, most often, are triggered off by the outcry and efforts of the youth and the observations of the international community who witness the suffering of vulnerable populations. These usually lead to peace-building efforts such as creation of international tribunals and

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<sup>xxxvii</sup> An : *Preventive diplomacy, peacemaking and peace-keeping: Report of the UN Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992.*

reconciliation commissions until permanent and treaty-based courts were established in the late 1990s and early 2000s to have jurisdiction over international crimes<sup>xxxviii</sup>. But before the coming into being of the permanent court (ICC), there was the setting up of international tribunals and courts dating back to the Second World War and the aftermath of the Cold War era. Internal armed conflicts and civil strifes across the world witnessed the following international tribunals: Far East and Nuremberg Courts (Allied Forces instituted Court/The Victor's Courts after the Second World War), International Criminal Tribunal for former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), Special Court of Sierra Leone (SCSL), Extra-Judicial Chamber of the Courts of Cambodia (ECCC) and Special Tribunal of Lebanon (Lebanon Court) and International Criminal Court (ICC).

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<sup>xxxviii</sup> *A serious call for an internationalised system of justice came from the drafters of the 1919 Treaty of Versailles, who envisaged an ad hoc international court to try the Kaiser and German war criminals of World War I. Following World War II, the Allies set up the Nuremberg and Tokyo tribunals to try Axis war criminals. 1948, the United Nations General Assembly (UN GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide in which it called for criminals to be tried.*

*The conflicts in Bosnia-Herzegovina and Croatia as well as in Rwanda in the early 1990s and the mass commission of crimes against humanity, war crimes, and genocide led the UN Security Council to establish two separate temporary ad hoc tribunals to hold individuals accountable for these atrocities, further highlighting the need for a permanent international criminal court. In 1994, the International Law Commission (ILC) presented its final draft statute for an ICC to the UN GA and recommended that a conference of plenipotentiaries be convened to negotiate a treaty and enact the Statute. To consider major substantive issues in the draft statute, the General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995.*

### III. What is International Crime?

A classical statement of International Criminal Law states as follows:

*“Crimes against international law are committed by men, not abstract entities, and only by punishing individuals who committed such crimes can the provisions of International Law be enforced ... Individuals have international duties which transcend the national obligation of obedience imposed by the individual.” (Excerpt from the Nuremberg International Military Tribunal)*

International crime refers to those offences over which international courts or tribunals have been given jurisdiction under general international law. They comprise the so-called ‘core crimes’ - genocide, crimes against humanity, war crimes and crimes of aggression (also known as the crime against peace)<sup>xxxix</sup>. Under this approach international crimes were considered to be those which were of concern to the international community as a whole or acts which violated a fundamental interest protected by international law.

The most serious crimes of concern to the international community as a whole are the core crimes<sup>xl</sup> and the recognition that such crimes threaten the peace, security and well-being of the world. In other words, international crime can also be defined as an offence which is created by international law itself, without

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<sup>xxxix</sup> *Articles 1 & 5(1) Draft Code of Crimes against the Peace and Security of Mankind, in Report of the International Law Commission.*

<sup>xl</sup> *An Introduction to International Criminal Law and Procedure, Robert Cryer, Hakan Friman et al.*

requiring the intervention of domestic law. In the case of such crimes, international law imposes criminal responsibility directly on individuals. These individuals include government officials, military commanders, soldiers, militia members, and civilians who are subject to prosecution for war crimes, crimes against humanity, genocide and applicable domestic crimes under international law. These were included in the statutes for the international criminal tribunals for Rwanda and the former Yugoslavia, as well as the Rome Statute of the ICC<sup>XLI</sup>.

#### IV. Individual Criminal Responsibility

Individual responsibility (Art. 25) in the ICC Statute, for instance, makes it clear that the court has jurisdiction over natural persons; persons committing crimes under the jurisdiction of the court shall be individually responsible and liable for punishment; regardless of the person committing the offence alone, jointly, with another, through another; regardless of whether the person is criminally responsible<sup>XLII</sup> - aiding and abetting (assist the crime); in the case of genocide – directly and publicly inciting others to commit the act...

Notably, an incitement to commit genocide represents the act of encouraging a person or persons to commit the crime of genocide as outlined in international criminal law instruments

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<sup>XLI</sup> See ICC, ICTY and ICTR Statutes.

<sup>XLII</sup> Article 25, Rome Statute of the International Criminal Court; Article 7, Rome Statute of the International Criminal Court; HUMAN RIGHTS WATCH VOL. 17, NO. 17(A) 80

and Genocide Convention 09 December 1948. Observably, the Rwanda Tribunal's (ICTR) definition of incitement in the *Akayesu* Judgment<sup>XLIII</sup>, for instance, outlined incitement to commit genocide as: 'Directly provoking the perpetrator(s) to commit genocide, whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication'.

The persons doing the inciting must also have the *mens rea*, in other words the intent to commit genocide, which could lead to the attempt to destroy in whole or in part a national, ethnic, racial, or religious group as such, as defined by Genocide Convention and re-confirmed by various international criminal tribunals statutes' definition of crime of genocide. In order to give the appropriate context, incitement can certainly act as a trigger for the commission of genocide. Incitement to commit genocide is not new in the face of history of international criminal law. It was essentially first prosecuted in the case of Julius Streicher at the Nuremberg Tribunal<sup>XLIV</sup> as the aftermath justice of the World War II perpetrated by the Nazis. Notably, Streicher was a German newspaper editor during the Nazi regime who often wrote (or published) virulent anti-Semitic diatribes.

Although during the days of Nuremberg trials, an incitement

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<sup>XLIII</sup> see Judgment, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 2 September 1998 and Sentencing Judgment, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 2 October 1998.

<sup>XLIV</sup> *Nazi Conspiracy and Aggression*. Vol. II. USGPO, Washington, 1946, pp.689-710 (also see <http://www.ess.uwe.ac.uk/genocide/Streicher.htm> -downloaded 30 June 2011)

to commit genocide did not exist as an element of crime on its own rights at that time, Streicher was tried within and for the crimes against humanity. He was found guilty and executed. The most essential aspect of the landmark case of Streicher was that the court recognised that words could be a good servant and a bad master, thus, words can kill – that incitement is a crucial ingredient in gross human rights violations.

Making reference to international criminal law, it prohibits “direct and public” incitement to commit genocide. In recognition to this, Article 3 of the Genocide Convention, Article 4 (3) (e) of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Article 2 (3) (c) of the Statute of the International Criminal Tribunal for Rwanda (ICTR), and Article 25 (3) (e) of the Rome Statute of the International Criminal Court (ICC), recognised genocide as international crime in their statutes and code of procedures and incitement as an element of genocide.

The developments of the two ad hoc tribunals and, subsequently, the International Criminal Court have allowed the crime of incitement to commit genocide to be prosecuted for the first time. There have been many prominent trials and convictions for incitement at the ICTR, including cases where leaders have been tried for inciting genocide in speeches, media personalities and publishers for incitement in the media, and even a pop singer for including genocidal messages in his songs. In recent accusation and trial of Kenya politicians by the ICC for the 2007 post-election violence, among them was a radio presenter who was accused

of incitement of Kenyans against one another<sup>XLV</sup>. Nevertheless, it is worth noting that incitement is also forbidden by many international human rights treaties. Notably, there must be a sort of careful equilibrium between the need to restrict incitement and the need to preserve freedom of expression enshrined in many national, regional and international human rights instruments.

*Nulla poena sine lege* principle is of the opinion that a person convicted by the Court may be punished only in accordance with this statute (Article 23). No provision in the statute relating to individual criminal responsibility shall affect the responsibility of states under international law. Individual criminal responsibility for war crimes committed during internal armed conflicts has been explicitly provided in a number of international treaties since the early 1990s<sup>XLVI</sup>. Individuals who commit war crimes may be held criminally liable. Furthermore, they may also be held criminally

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<sup>XLV</sup> *Prosecutor v Joshua Arap Sang (an on going case - so far only initial appearance for the confirmation of hearing and status of conference have taken place)*

<sup>XLVI</sup> *See Prosecutor v. Kupreskic et al., ICTY Judgment, January 14, 2000, para. 556; See Kupreskic et al., ICTY Trial Chamber, January 14, 2000, para. 556: "[T]he requisite mens rea for crimes against humanity appears to be comprised by (1) the intent to commit the underlying offence, combined with (2) knowledge of the broader context in which that offence occurs." See also Tadic, ICTY Appeals Chamber, para. 271; Kayishema and Ruzindana, ICTR Trial Chamber, May 21, 1999, paras. 133-34 and Blaskic, ICTY Trial Chamber, March 3, 2000, para. 257. Blaskic (paras. 258-59) listed factors from which could be inferred knowledge of the context: [a] the historical and political circumstances in which the acts of violence occurred; [b] the functions of the accused when the crimes were committed; [c] his responsibilities within the political or military hierarchy; [d] the direct and indirect relationship between the political and military hierarchy; [e] the scope and gravity of the acts perpetrated; [f] the nature of the crimes committed and the degree to which they are common knowledge.*



responsible for assisting in, facilitating, aiding or abetting the commission of a war crime. They can also be prosecuted for planning or instigating the commission of a war crime. In addition, civilian officials, military commanders, and soldiers who order or commit crimes against humanity can be held individually liable. Crimes against humanity give rise to universal jurisdiction; this principle does not have a statute of limitations, and does not admit the defence of superior orders.

*The most significant early use of the phrase “crimes against humanity” came during the First World War when, on May 24, 1915, the Allies of World War I, Britain, France, and Russia, jointly issued a statement explicitly denouncing, for the first time, the commission of a “crime against humanity” in response to the Armenian Genocide and warned of personal responsibility for members of the Ottoman Government and their agents. At the conclusion of the war, an international war crimes commission recommended the creation of a tribunal to try “violations of the laws of humanity”. However, the US representative objected to references to “law of humanity” as being imprecise and insufficiently developed at that time and the concept was not pursued. Crimes against humanity defined in paragraph 6(c): “Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated”.*

*Crimes against humanity, as defined by the Rome Statute of the International Criminal Court Explanatory Memorandum, "are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority. Murder; extermination; torture; rape; political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of falling into the category of crimes under discussion".*

## V. Internal Armed Conflict versus Other Conflicts

In the context of international crime in internal armed conflict, it is necessary to distinguish between situations of internal armed conflict and other forms of conflicts that international law, international human rights and humanitarian law recognise and [to] also define some key words such as International Criminal Court and International Crimes (Crime Against Humanity, War Crime, Genocide). There are four types of conflict situations recognised by international law, each of which is governed by

different bodies of legal norms.

These are:

- tensions and disturbances
- international armed conflicts
- wars of national liberation and
- internal armed conflicts<sup>XLVII</sup>.

However, international humanitarian law distinguishes only two forms of armed conflict, namely international armed conflict and internal armed conflict<sup>XLVIII</sup>. According to Mark Freeman, internal tensions and disturbances amount to situations that fall short of armed conflict but involve the use of force and other repressive measures by a government to maintain or restore public order or public safety. He acknowledged that it is the international human rights law that applies in such circumstances. This is because governments are permitted to derogate from or limit a restricted set of obligations under international human rights law in the context of tensions and disturbances. He observed that the term “international armed conflict” describes armed conflict as two or more states engaged in armed confrontation. In such cases, international humanitarian law becomes operative; particularly those contained in the four Geneva Conventions and Protocols to the Geneva Conventions. Furthermore, most human

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<sup>XLVII</sup> Mark Freeman, *International law and internal armed conflicts: clarifying the interplay between human rights and humanitarian protections*.

<sup>XLVIII</sup> ICRC opinion paper March 2008 entitled *How is the term “armed conflict” defined in international humanitarian law*

rights guaranteed remain applicable in such situations, albeit subject to some types of derogations and limitations permitted to governments in such conditions of internal tensions and disturbances.

Thirdly, Freeman defined the term “wars of national liberation” as armed conflicts in which “people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination”. Generally speaking, the same provisions of international humanitarian law and international human rights law that apply in the context of international armed conflict apply equally in the context of wars of national liberation.

Lastly, the term “internal armed conflict” is said to be armed conflict that cannot be characterised as either international armed conflict or wars of national liberation. But these must take place in the territory of a high contracting party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a party of its territory as to enable them to carry out sustained and concerted military operations and to implement Additional Protocol II to the Geneva Conventions<sup>XLIX</sup> (which develop and supplement Article 3 common to all the four Geneva Conventions) of 12 August 1949, and relating to the protection of victims of non-international armed conflict (Article 1 of Additional Protocol II, 8 June 1977).

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<sup>XLIX</sup> *In Prosecutor v Dusko Tadic landmark decision the Appeal Chamber in the ICTY refined and defined internal armed conflict.*

## VI. Overview of Human Rights

International criminal law can be effective and practicable during times when international human rights and international humanitarian law principles are breached by belligerents, armed groups and governments. Over the years, and more specifically since the Second World War, human rights issues have become matters of vital importance to the world. Before the Second World War, human rights cases were primarily seen as the internal affairs of individual countries. This was because the international community did not consider citizens as important in political matters in comparison with sovereign states considered as the only actors on the world stage<sup>1</sup>.

Although rights are inalienable, which means everyone is supposed to enjoy them, they are, to a large extent, being violated by individuals and states. People and groups are being denied their basic human rights, suffering injustices such as rape, arbitrary arrest, forced displacement, arbitrary killings and disappearances; there is incidence of destruction of property, maladministration of justice, limited access to health, good water, education, etc. The reason for the change in attitude towards the protection of human rights is not far-fetched. It is largely a result of the awful atrocities committed during the Second World War which pricked the conscience of mankind. This led to the search for ways by which the intrinsic worth and dignity of human beings could be recognised and protected by law.

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<sup>1</sup> <http://panorama.citizens-of-europe.eu/?p=35> and <http://www3.interscience.wiley.com/journal/119112593/abstract> (downloaded 20 Feb 2011)

Soon after the Second World War, the United Nations was established to reaffirm 'faith in fundamental human rights, in the dignity of the human person, in the equal rights of men and women of all nations, large and small'<sup>11</sup>. This was the emergence of the political will needed to support the inalienability of the rights that everyone has to enjoy as contained in the UN Charter.

This strong stand and commitment to human rights by the global institution has led to the adoption of a variety of human rights treaties, with the Universal Declaration of Human Rights of 1948 being the basic. This was given more meaning as it was replicated at regional levels to bring human rights to the door-steps of the individuals and communities, in Europe, America, Africa<sup>12</sup> and the rest of the world; while some countries incorporated them into their national constitutions.

## VII. Human Rights Situation in Africa

Arguably, Africa remains a continent ravaged by poverty and grave human rights violations. The pattern in Africa today, most specifically Sudan (Darfur in particular), Northern Uganda, Congo (DRC), Kenya (Post-election violence), Somalia, Burundi, Cote d'Ivoire etc reveals cases of arbitrary arrests and detention

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<sup>11</sup> *Universal Declaration of Human Rights in 1948*

<sup>12</sup> *European Convention on Human Rights, American Charter on Human Rights and African Charter on Human and People's Rights. These regional human rights charters bring human rights to the door-step of the individuals and the ordinary citizens and community at large; the regional charters also motivate and allow the states to adopt the provisions direct into their constitutions. For instance in 1998 Britain adopted the one of Europe direct into her constitution to give effect to human rights in the UK's domestic's politics and judicial remedies.*

and torture, political and religious persecution, denial of press freedom, denial of fair trial rights, exclusion from governance processes, lack of accountability, absence of the rule of law, lack of independence of the judiciary, disappearances, extra-judicial, summary and arbitrary executions, ethnic cleansing, violation of vulnerable people, burning and destruction of civilian goods and property, rape and deprivation of the full range of socio-economic rights such as education, health services, housing, food, etc<sup>LIII</sup>.

The establishment of the Organisation of African Unity (OAU) in 1963 (now the African Union, AU) engendered the coming into being of the African Charter on Human and Peoples' Rights and the subsequent formation of the African Commission on Human and Peoples' Rights for the effective implementation of the Charter. There were various moves to strengthen the African system for the promotion and protection of human and peoples' rights, such as the adoption of the African Charter on the Rights and Welfare of the Child, the Protocol on the Establishment of an African Court on Human and Peoples' Rights and the Protocol on the Rights of Women. Most significantly, there was the ratification of the African Charter on Human and Peoples' Rights by all

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<sup>LIII</sup> Office of the High Commissioner for Human Rights Press release and reports on sexual violence during attacks on villages and enforced disappearance of men arrested in South Darfur 06<sup>th</sup> April 2007 (In international human rights law, a forced disappearance (or enforced disappearance) occurs when a person is secretly abducted or imprisoned by a state or political organisation, or carried out by third party with the authorisation, support, or acquiescence of a state or political organisation, followed by a refusal to acknowledge the person's fate and whereabouts, with the intent of placing the victim outside the protection of the law.[1] or see the International Convention for the Protection of All Persons from Enforced Disappearance by United Nations General Assembly.

member states of the African Union.

The human rights situations in most African countries have been the object of close scrutiny by the UN Commission on Human Rights<sup>LIV</sup> and many other international human rights organisations. Since then many reports have been presented on most affected War-torn African countries to the UN General Assembly. The conflicts on the continent and the deterioration of the humanitarian situation in Africa have led to some of the worst human rights abuses imaginable, including systematic and widespread murder, rape, abduction and displacement. Hundreds and thousands of civilians have been killed by both deliberate and indiscriminate attacks while many civilians have been displaced. The situation on the ground has worsened considerably with renewed violent attacks and aerial bombing by governments.

In Sudan, for instance, the government is preventing the desperately needed UN Security Council-mandated peacekeeping forces from being fully deployed. In Kenya it has not been easy for the ICC to woo the state to refer its matters before the court.

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<sup>LIV</sup> *The United Nations Commission on Human Rights (UNCHR) was a functional commission within the **overall framework of the United Nations** from 1946 until it was replaced by the **UN Human Rights Council** in 2006; the **UN General Assembly** voted overwhelmingly to replace UNCHR with the **UN Human Rights Council** with the main purpose of addressing situations of human rights violations and make recommendations on them. The Human Rights Council is an inter-governmental body within the UN system made up of 47 states responsible for strengthening the promotion and protection of human rights around the globe. It was a subsidiary body of the **UN Economic and Social Council (ECOSOC)**, and was also assisted in its work by the **Office of the United Nations High Commissioner for Human Rights (UNHCHR)**. It was the UN's principal mechanism and international forum concerned with the promotion and protection of **human rights**.*



As it is perceived by some professionals of international law, international judicial set-ups are usually courts for the “powerful” against the “weak”; the governments of Uganda, Congo and Central African Republic with the empowerment of the Rome Statute were able to refer the opponents to be prosecuted by the international judicial system. In the case of Sudan which is not a signatory to the ICC Statutes, its situation was referred by the UN Security Council to the court as stipulated in Article 13 of the ICC Statute. It is worthy to note that if Sudan had a good alliance it might have benefited from veto, rather than abstention and voting in favour.

In Darfur, Khartoum government continues to play games with victims and the international community.

For instance, due to international pressures on Khartoum, it promised compensation for injuries to tribes and individuals who suffered attacks and other human rights atrocities from the hands of rebel groups, government military and its allied militias – the Janjaweed – that promised compensations intentional went to the wrong hands. Various ad hoc reconciliation moves<sup>LV</sup> were instituted by the state authorities for selected affected groups, which are not representative of affected populations and has been seen as attempts by the government to make global headlines and improve its image. In the case of Uganda the government likewise seems to be playing games on the international community. Notably, after referring the Northern Uganda situation to the ICC, later came up with a new proposal that they wanted to try the Lord Resistance Army (LRA) themselves instead of the ICC.

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<sup>LV</sup> *African Union Strips and UNMIS civil affairs reports on reconciliation committees formed in Darfur 2006*

Additionally, blanket amnesty was pronounced and given to those who defected from the LRA movement<sup>LVI</sup>. In most conflict-affected countries in Africa, the states were noted to have formed armed groups such as Janjaweed in Sudan, Maimai in Congo and Kamajors in Sierra Leone (days of War) to fight alongside with government forces to begin a murderous campaign against the non-supported tribes who know but ignore international human rights and humanitarian law norms. This, in the end, left thousands of people dead, and many people displaced. In Darfur, Kenya and Somalia the international community has described those situations as the worst humanitarian crisis in modern history.

## VIII. International Humanitarian versus Human Rights Law

The two laws are complementary. They both strive towards protecting the lives, health & dignity of individuals and albeit from different angles. Human rights are for all times – during peace and war times; while international humanitarian law applies in situations of armed conflict to people who no longer take part in hostilities and the ‘protected people’.

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LVI <http://www.amnesty.org/en/news-and-updates/news/uganda-strikes-deal-lra-trials-20080220> and <http://kabiza.com/Amnesty-for-LRA.htm> (downloaded 25 Feb. 2011).

## IX. Using Darfur Cat and Mouse Question as an Example: The ICC and Sudan

In 2005, after various committees' findings, the UN Security Council, in an unprecedented move, referred the case of Darfur to the ICC for investigation<sup>LVII</sup>. The ICC investigations of these atrocities and crimes have been actively obstructed by the Sudanese government. In April 2005, the UN submitted a list of 51 Sudanese suspects to the ICC. Although the list remains embargoed, it presumably includes the names of many high-ranking Sudanese government officials. Many experts agree that if the ICC can succeed in the difficult task of establishing peace through justice in the Sudan, it can strengthen its place among the major bodies of the world system.

In his report to the Security Council in June 2006, the ICC prosecutor, Luis Moreno-Ocampo, dispassionately recounted that his team had collected evidence of large-scale massacres, thousands of 'slow deaths' from forced displacement, destruction of food-stocks, and hundreds of rape cases, with many more going unreported<sup>LVIII</sup>. It is arguable, whether the prosecutor will be able to overcome Khartoum's obstruction, and bring to justice those most responsible for these atrocities.

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<sup>LVII</sup> <http://www.globalpolicy.org/intljustice/icc/darfurindex.htm> (downloaded 23 Feb11) - this issue continues to be a contention in the international arena where the President of Sudan is being indicted and awaiting ICC judges' approval. This is a big international issue and a test for the UN and ICC for indicting a sitting President for the first time.

<sup>LVIII</sup> June 14, 2006 UN report: International Criminal Court Prosecutor briefs Security Council on Darfur, He said he would not draw conclusions on genocide until investigations were completed - Luis Moreno-Ocampo added that given the scale, complexity of crimes, anticipates prosecuting 'sequence of cases, rather than a single case' being dealt with.

Two government officials of Sudan were indicted and a warrant of arrest was issued by the pre-trial chamber of the ICC but the government of Sudan refused to cooperate. Although Sudan is not party to the ICC, the work of ICC depended on government cooperation as it has no police unit to execute arrest on its behalf as is in the case of domestic systems.

## X. ICC Indictments

Arguably, some African leaders say the ICC is gripped with prosecuting Africans and ignores war criminals on other continents. Despite this, African countries were divided about whether they should arrest Sudanese President Omar Hassan Al Bashir on suspicion of genocide, war crime and crime against humanity levelled against him. The court added genocide to the charges, accusing him of orchestrating crime of interest to the international community (murders, rapes, and torture). A draft of a resolution to be passed at the African Union (AU) summit in the Ugandan capital Kampala in July 2010 contained two contentious clauses.

These clauses were supposed to be an AU resolution on the ICC and to go against the ICC which was expected to be agreed on by heads of states. Nevertheless, South Africa, Ghana and Botswana led the argument that the clauses should be removed whilst Libya, Eritrea, Egypt and some other countries who have not signed up to the ICC statute fought strongly against that but they lost out in the end. As a result, both paragraphs were removed following a long argument by the members. Despite

the fact that over 30 Africa Union member countries signed and rectified the ICC Statute, the first clause contended and removed, was advising African countries not to arrest al-Bashir if he visited their nations. Additionally, the AU reiterates its decision that AU member states shall not cooperate with the ICC in the arrest and surrender of President Bashir. The second contention was an attack on prosecutor Luis Moreno-Ocampo in person. If these two clauses were not contended and by any chance were allowed to be pasted by the AU, this could have been contrary to treaty obligation to the individual states than AU as an organisation which was not a legal part to the signature of the ICC Statute. Ironically, Al Bashir went to Chad and Kenya in defiance of his arrest warrant on his visit to full ICC member countries in mockery of the ICC.

The court said Bashir should be arrested, but none of those nations had intention to do that.

*"...I reminded the delegates that the eyes of victims of past crimes and potential victims of future ones were fixed firmly upon them; the delegates, many of whom were African, acted on that unique opportunity and created an institution to strengthen justice and rule of law. The African Union's repeatedly stated commitment to battle impunity will be put to test. In recent months, some African leaders have expressed the view that international justice as represented by ICC is an imposition, if not a plot, by the industrialised west. This outcry against justice demeans the yearning for human dignity that resides in every African heart. It also represents a step backwards in the battle against impunity..."* By Kofi Annan, Published: 29 June 2009, the New York Times

In February 2007, the office of the ICC prosecutor filed prosecution documents as evidence with the ICC pre-trial chamber. The Chamber's (Court's) judges named Ahmad Muhammad Harun and Ali Muhammad Ali Abd-al-Rahman, state minister for Humanitarian Affairs and a leader of the Darfur Janjaweed militia group respectively as responsible for crimes against humanity and war crimes.

The filing marked the first accusations against the named individuals as a prelude to a trial. The pre-trial chamber, issued warrants of arrest against the accused. On December 5, 2007, Moreno-Ocampo briefed the United Nations Security Council on the status of his investigations in Sudan. To date, despite repeated calls from the ICC chief prosecutor, the Khartoum government has made no attempt to hand them over and continues to state that they will not hand their citizens over to the ICC for prosecution. In fact, enforcement of Darfur perpetrators needs the UN Security Council's intervention as they are the referral institution.

*"A triumph for justice or a blow to peace in Sudan"* was a headline in a newspaper when the ICC issued a warrant on 4 March 2009 for the arrest of Sudan's President, Omar Al Bashir, on charges of crimes against humanity and war crimes and genocide, as first of its kind that the court was indicting a sitting head of state<sup>LIX</sup>.

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<sup>LIX</sup> In fact, Mr Bashir would not be the first head of government to be hauled up in court for his alleged crimes: Liberia's Charles Taylor is on trial before a Sierra Leone court, convened in special session at The Hague; and Yugoslavia's Slobodan Milosevic beat his own likely conviction by tribunal only by dying before the trial was over. In both cases there were worries that bringing leaders to book would up-end peace efforts, but these proved unfounded.

Notably, he is not the first to be indicted by an international tribunal as an incumbent president but first in the history of International Criminal Court. The prosecutor office spelt out the suffering of the people of Sudan's western region of Darfur as: murder, torture, rape, pillage, the forcible transfer of people and deliberate attacks on civilians. Despite early rejection of the third count, recently, with the additional evidence tendered to the pre-trial chamber, it accepted genocide charges against Gen. Bashir as was indicated during the early indictment days. "Give us more evidence, said the ICC judges, and we'll restore it"<sup>LX</sup>. I can argue that Article 58 (a) of the statute requested that there should be *reasonable grounds to believe that the person has committed a crime within the jurisdiction of the court*. This means the Court needs a *prima facie* instance to indict anyone. Most legal proceedings require a *prima facie* case to exist (unless rebutted), following which proceedings may then commence to test it, and create a ruling.

Therefore rejecting the genocide charges from its *prima facie* instance was concern to international legal practitioners for the sense that the ICC Court failed to accept the genocide charges at ago, until the prosecutor's determination to add more evidence. Despite this indictment and weakness of the ICC, Bashir continues to conduct business and travel to various countries including some ICC signatory countries and UN member countries; arguably, it is a breach of treaty law and norms of international law as a whole.

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<sup>LX</sup> *The Economist* (05 March 09) printed version international justice: A warrant for Al Bashir – Can Sudan's serving head of state really be brought to justice for his alleged crimes in Darfur?

## XI. Legal Positive Obligation of International Community to Help other States

The normative guidance to international relations and global policies must be sought in the United Nations Charter, which is legally binding on all its member states. The purposes set out for the organised international community are found in Article 1 of the Charter, where subparagraph 3 is of particular relevance here:

*“to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”*

The implementation of the United Nations’ purposes and principles is regulated in other parts of the charter. Under Article 56, member states pledge to take joint and separate action in cooperation with the UN for the achievement of the more detailed purposes set forth in Article 55, which intended to

*“Create conditions of stability and well-being necessary for peaceful and friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples.”*

For these purposes, the UN and its member states individually and collectively, shall promote:

Higher standards of living, full employment, conditions of economic and social progress and development; solution of international economic, social, health-related problems, international cultural and educational cooperation; universal



respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. International human rights should be matched with a corresponding legal basis within states; consequently, appropriate legislative and other measures should be adopted.

Human rights require active and effective remedies, not necessarily by the use of courts. Human rights imply accountability, both domestic and international. At the international level, human rights are subjected to monitoring through a reporting process and dialogue.

## XII. Immunities of State Officials and Prosecution of some Heads of State

International law recognises two types of the doctrine of immunity from prosecution. It allows an accused to avoid prosecution from criminal offences. These are *ratione materiae* (functional immunity) and *ratione personae* (personal immunity). The first is for the people who perform certain functions of the state whilst the second stands for immunity granted to certain officials because of the office they hold, rather than in relation to the crime that they have committed. Based on above international norm, why should heads of state and ministers of state be subjected to prosecution under international judicial system individually?

Recent development of international law suggested that immunity, whilst it may be available as a defence against prosecution for local or domestic or civil liability, it is noted that it cannot stand the test of time as a defence in matters of

international crime. It is argued that Article 27 of the ICC statute strictly stipulates that the rules in their statutes apply equally to all persons without distinction based on official capacity. In particular, official capacity as head of state or government, a member of government or parliament, and elected representative or a government official, in no case shall they exempt a person from criminal responsibility or reduction of sentence. Special rules or immunities that may attach to official capacity of a person under national or international law shall not stop the court from any form of persecution against such persons who are allegedly involved or aided the commission of international crime.

There have been instances where some heads of state and government officials have appeared before the court or have been indicted. On prosecution under functional immunity, the English court for instance held that a warrant could not be issued for the arrest of Robert Mugabe on charges of international crime on the basis that he was a serving head of state at the time the proceeding was brought [2004] 53 ICLQ 789. Also the attempts to prosecute Fidel Castro in Spain and Jaing Zemin in USA, among others, are some other examples. Notably if those accused leave office, they are liable to be prosecuted for crimes they committed before and after leaving office or crimes committed in office in a personal capacity. In the matter of Pinochet, he was only able to come to trial due to Chile and UK being parties to the UN Convention against Torture<sup>LXI</sup>.

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<sup>LXI</sup> *The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human rights instrument, under the review of the United Nations that aims to prevent torture around the world. The Convention requires states to take effective measures to prevent torture within their borders, and forbids states to return people to their home country if there is reason to believe they will be tortured. The text*

The constituent statute of the Special Court of Sierra Leone (SCSL) allowed prosecution of state officials<sup>LXII</sup>. Even though Charles Taylor incumbent President of Liberia, during the time that he was indicted, the SCSL appeal chamber held that he could not use immunity as a yardstick to dodge his charges. This has developed in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia – Milosevic, Furundzija and Karadzic case. The excuses by judges have always been that immunities could not be defence for *jus cogens* norms violations i.e. they are non-derogable rules therefore they should not be corroded by immunities. These served as a deterrent for officials who enjoy immunity and feel they are untouchable, to realise that they can be touchable if they commit egregious and heinous crimes of interest to international criminal law.

Despite all these possibilities of immunity and culture of impunity in Sudan, my question is, will Al Bashir be arrested and extradited to stand trial one day? I pointed out that Mr. Al Bashir's Sudan is not a signatory to some international human rights treaties. Especially, Sudan is not a member or signatory to the Rome statutes. According to treaty law if a country is not party to a treaty that country is not bound by the rule of that particular treaty<sup>LXIII</sup>. In the case of Sudan, Article 13 (b) of the statute empowered the UN Security Council under its power of Chapter VII to refer matters to the court.

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*of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987. As of September 2010, the convention had 147 parties*

<sup>LXII</sup> See SCSL Statute and SCSL precedent or case laws.

<sup>LXIII</sup> See Vienna Convention on the Law of Treaties Done at Vienna on 23 May 1969.

As a result, the Darfur situation was referred to the ICC by the UNSC. Various precedents lead to the conclusion that Al Bashir could be arrested one day after he is out of power like Pinochet and Milosevic or under cooperation of ICC member states (like Charles Taylor who was forced to Nigeria and subsequently arrested and is being tried by SCSL, though it should be noted that his case was under a different court and circumstance).

*“The worst crimes, the law and the UN Security Council - Braced for the aftershock”*

*“The International Criminal Court issues its first indictment against a serving head of government, Sudan’s Omar Al Bashir”*

*“In fact, Mr Bashir would not be the first head of government to be hauled up in court for his alleged crimes: Liberia’s Charles Taylor is on trial before a Sierra Leone court, convened in special session at The Hague; and Yugoslavia’s Slobodan Milosevic beat his own likely conviction by tribunal only by dying before the trial was over. In both cases there were worries that bringing leaders to book would up-end peace efforts, but these proved unfounded. Still, both cases show that arresting “big fish” like Mr. Bashir is virtually impossible without the cooperation of many governments, argues a new report on enforcing international criminal law published by the British-based Aegis Trust”. - Economist 05 March 2009*

In the case of Gen. Al Bashir, he got warnings from some ICC member countries in Africa – Uganda, Malawi, South Africa, Ghana, Botswana etc<sup>LXIV</sup> – that he could be arrested if he travelled

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<sup>LXIV</sup> KAMPALA, July 25 (Reuters) - African countries are divided about whether they should arrest Sudanese President Omar Hassan Al Bashir

to their countries. Regardless of the international community calling for the arrest of Gen. Al Bashir as stipulated by statute, a member state is obligated to cooperate with the court to arrest and extradite any person wanted by the court.

Mr. Bashir, as an indicted and wanted President, went to Kenya during the time of the inauguration of their new constitution with the excuse that Kenya was following AU's directives for its members not to cooperate with the ICC.

Kenya got condemnation from various western countries which threatened withdrawal of aid and this instituted fear in other African countries which then sent messages and signal to Sudan that if Al Bashir travels to their countries there is greater chance of him being arrested. If Al Bashir is arrested one day he could be charged for contempt of the court and if found guilty for international crime he will be jailed in accordance with ICC procedure without any form of clemency.

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*on suspicion of genocide, diplomats at a summit told Reuters. Bashir was indicted by the International Criminal Court (ICC) for war crimes in Darfur in 2009. The court added genocide to the charges, accusing him of orchestrating murders, rapes, and torture in the troubled western region. A draft of a resolution to be passed at the African Union (AU) meeting in Uganda contained two contentious clauses. But both paragraphs were removed after a long argument. The first clause advised African countries not to arrest Bashir if he visited their nations -- even if they had signed up to the ICC as 30 African countries have. "(The AU) reiterates its decision that AU member states shall not cooperate with the ICC in the arrest and surrender of President Bashir," the paragraph said. The second deleted clause attacked prosecutor Luis Moreno-Ocampo.*

### XIII. Complementarity, National Jurisdiction and Referral

In conclusion, many Africans argue that ICC per se is instituted to try Africans only. Current cases before the court depict only African situations and all the referred cases testify same. ICC receives its cases through the following means: State referrals – (Art. 14 and Art. 13(a); Proprio motu powers – Art. 15 and Art. 13 (c); Security Council referrals – (Art. 13 (b). So far only African countries are under the test: Congo, Central African Republic, Northern Uganda, Sudan and Kenya whilst the following African countries are under ICC investigation: Kenya, Guinea and Cote d’Ivoire (Ivory Coast). Nevertheless, in the court’s statute, it has always given chances to the referred states to try all international crimes under its jurisdiction. The court only comes in if the state is not willing to deal with the situation.

The Principle of Complementarity is a doctrine employed by the ICC in its preamble which recalls that it is the duty of every state to exercise its criminal jurisdiction over perpetrators of international crimes. This means that the ICC is established to be complementary to national criminal jurisdiction (politi et al (ed): p.25). But where a state intentionally fails to or is objectively unable to deal with any case(s), then the ICC will jump in and handle it (Article 17 (a) (b). It was acknowledged that in the UN Security Council-instituted tribunal under Chapter VII, series of courts ( in Sierra Leone, Rwanda, East Timor etc) and the (ICC) hunted countries in Africa, all those countries employed (willingly or persuasively), both Alternative Dispute Resolution methods

(ADR) and international judicial remedy concurrently, for the effort and the achievement of justice, peace and reconciliation. To illustrate this idea better, the Gacaca Court<sup>LXV</sup>, traditional judiciary trials (Court of law) and ICTR in Rwanda were going on concurrently. Truth and Reconciliation Commission in Sierra Leone went parallel with trials in the SCSL as well as Amnesty granted to rebel in the case of Northern Uganda by the central government was going on concurrently with the ICC hunting for the rebel leader Joseph Coney and associate in the northern part of Uganda. In Kenya the ICC prosecutor made it a point to the authorities that they could bring to trial only few perpetrators and urged the government to also try under national law most of the cases.

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<sup>LXV</sup> *The Gacaca court is part of a system of community justice inspired by tradition and established in 2001 in Rwanda, in the wake of the 1994 Rwandan genocide. After the genocide, the new Rwandan Patriotic Front's government struggled with developing just means for the humane detention and prosecution of the more than 100,000 people accused of genocide, war crimes, and related crimes against humanity. From December 1996 to December 2006, the courts managed to try about 10,000 suspects (Human Rights Watch 2004, 18). The objective of the Gacaca Court System is to achieve "truth, justice, and reconciliation." It aims to promote community healing by making the punishment of perpetrators faster and less expensive to the state. "Gacaca Courts" system has the following objectives: The reconstruction of what happened during the genocide; The speeding up of the legal proceedings by using as many courts as possible; The reconciliation of all Rwandans and building their unity. The Supreme Court [of Rwanda] has been endowed with a 6th court called "Gacaca Courts Department" in order to co-ordinate and supervise the activities of the various courts without having to interfere with the decisions that they will have to make [and] in order to keep the national as well as the international community informed about the evolution of the Gacaca Courts' activities. There are 8140 Gacaca courts located throughout the country. Each Gacaca Court has nine judges and has the power to sentence criminals up to life imprisonment, but not the death penalty.*

## XIV. Conclusion

International criminal law today has given tooth to international human rights and humanitarian law. The law paved way for the prosecution of perpetrators of international crimes (in Rwanda (The ICTR), Sierra Leone (SCSL), Liberia former president facing trails at the Hague, Kenya (The ongoing case filed at the ICC by the prosecutor), Sudan (The indictment of the President of Sudan and the trail of the rebel leaders), Uganda, (ICC trial of the LRA), However there still continues to be strife in Somalia, Eritrea, Ethiopia, Congo, Central Africa republic, Zimbabwe, Nigeria, the Arab world, among others which makes a case for understanding the causes and finding a lasting solution. These strife witnessed, usually come in the form of inter-tribal/inter-clan conflicts, post-election violence, military coup d'états, inter-personal conflicts, civil war and popular uprising. The aftermath effects of these conflicts on protected groups (civilian, wounded, shipwrecked and those who qualify for *hors de combat* etc) in international law become objects and subjects under international law.

Notably, there are two main branches of humanitarian law that come together to form international humanitarian law: the law of The Hague (dealing with the regulation of armed combat) and the law of Geneva (dealing with protected persons). The protected persons as mentioned under the law of Geneva could be said to be the wounded and shipwrecked, prisoners of war, civilians, medical personnel, and clerics. International Humanitarian Law (IHL) also spells out that, when a soldier surrenders, they must be



*"hors de combat"* and allowed to live. Nevertheless, it is worth noting that the norms governing international armed conflicts are much more detailed than those covering internal armed conflicts.

In order to understand the above, from the context of IHL (the law when breached could lead to international criminal trials), can be summarised into five general principles. These are: principle of "Military Necessity": No action can be taken that is not militarily necessary. One should use only the minimum necessary force to achieve a legitimate military objective; additionally, the principle of "Humanity": The techniques of war used (including the weaponry) should not cause "superfluous injury or unnecessary suffering." There are many treaties dealing with the prohibition of certain classes of prohibited weapons such as poisonous gases, landmines, hollow tip bullets, etc.

The idea of protected persons is also part of the concept of humanity; Furthermore it requires the principle of "Distinction": One should not directly target civilians and civilian objects, only military personnel and objectives; Also, important is the principle of "Proportionality": An objective must receive military benefits proportional to the humanitarian costs; lastly the principle of "Honourable Conduct": This includes a prohibition on tactics that undermine IHL such as intentionally-blurring the distinction between civilians and combatants, misusing symbols like the red cross, or pretending to surrender or be wounded and then attacking.

There are a number of provisions of IHL that have risen to become part of customary international law (such as the protected status of the wounded). The most egregious violations of international

humanitarian law (such as grave breaches of the Geneva Conventions) are deemed to be war crimes. War crimes fall under the jurisdiction of all international criminal courts (such as the International Criminal Court and Special Court for Sierra Leone), as well as many national (military) tribunals. Some war crimes (such as torture, rape, and indiscriminate attacks on civilians) are extreme enough to be considered as gross human rights violations.

Despite the breaches of international laws, in various African countries, the incessant strife has also made Africa to remain as one of the poorest continents in the World despite all the potential for developing. These challenges made international Criminal Law and the international tribunals popular and over publicized in Africa, especially after the advent of ICC than other parts of the world where similar justice needed to apply – if one takes a critical look at 1990s and 2000s - events witnessed in Africa Continent, one would conclude that all the Wars in the globe are in Africa. These theatres and scenarios of under-development seem to threaten international peace and security as outlined in the UN charter. Currently, under international rules, every region should handle its own affairs but the question is, is the African Union capable of handling all these systematic theatres being witnessed in the region of late? Were they able to take full responsibility of Darfur and Somalia cases that they made effort to curb which are of interest to international law and international community as a whole? The AU so far looked at only peacekeeping but not peace-building or searching for justice.

This seems that the AU focus was supporting the interest of the individuals and calling for deferral of Sudan and Kenya situations under the test of ICC's UN Security Council referral powers and *proprio motu* powers of Mr. Ocampo's office respectively. As ordinary Africans looking for outside justice from the international community, the international judicial system should stay far away from (world) politics and handle matters without interferences and bias on the basis of strategic interest of world powers and the said courts should not be like the courts for the powerful but also have the role of protecting the weaker people or countries.

## XV. Recommendation

- The governments in Africa should put the agendas of their states first rather than individual agendas, and extradite named perpetrators to face international justice where they are not genuinely able to or are unwilling to pursue justice under complementarity.
- African countries should integrate international crimes in their statute books to enable them to "standby" for any test of the future as Africa is noted to be a continent prone to conflicts and civil strife.
- International judicial system should stay far away from (world) politics and handle matters without interference and bias on the basis of strategic interest of world powers. Also the said courts should not be treated as courts for the

powerful but manifest the role of protecting the weaker populace.

- The African Union should stop interfering in ICC business by constantly advocating UN Security Council deferral of situations involving state officials. Rather, the AU should encourage the prosecution of individuals alleged to have committed international crimes in order to send signals, both internally and externally, that the region no longer tolerates impunity on the continent.
- African countries should opt for local options such as special tribunals similar in structure to the Rwanda and Sierra Leone special courts as a mechanism for accountability for those who shoulder the greatest responsibility for international crimes which will embrace both domestic and international laws. Alternatively, the AU and the UN should encourage and upgrade ICTR and the African Court of Human and Peoples' Rights to serve as regional tribunals to deal with international crimes within the continent. This will discourage the perception that ICC is a court meant for only the Africans.
- States affected by brutalities should endeavour to investigate and show concern and willingness to prosecute the matters in the interest and to the satisfaction of the international community.
- In situations where mass human rights abuses and humanitarian law violation are recorded against several classes within the society, there should be trials at various levels. Aftermath reconciliations should also be

encouraged and the issue of amnesty should be discussed thoroughly and not granted on blanket basis. Amnesty should be given solely in the interest of peace, justice and re-unification.

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# The Nature of War in Africa: The Eastern Democratic Republic of Congo's *War across States*

By Dr James J. Henz

## Introduction

Post-Cold War Africa is home to most of the world's conflicts.<sup>LXVI</sup> It has staged serious conflicts in the past twenty-five years, with casualties between 3,800,000 and 6,899,000. There are more U.N. peace-keeping troops in Africa than on any other continent, as of 2006 seventy five percent of all UN peacekeepers were in Africa.<sup>LXVII</sup> During the last decade, more than half of Africa's states have been in warfare.<sup>LXVIII</sup> Why?

The image of Africa as ridden with conflict and chaotic has led to two separate strains in the analysis of war in Africa. Either, they are treated as classical wars, what we could call Westphalian wars, or they catalogued as new wars. The former category typically includes two types of wars, international and civil.

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<sup>LXVI</sup> Lotta Harbom and Peter Wallensteen, "Patterns of Major Armed Conflicts, 1990-2005," in *SPIRA Yearbook 2006, Armaments, Disarmament and International Security* (New York: Oxford University Press, 2006), p. 109.

<sup>LXVII</sup> Andy Knight, "DDR and Post Conflict Peacebuilding in Africa," *African Security* Vol. 1, No. 1 (2008).

<sup>LXVIII</sup> Karin Dokken, *African Security Politics Redefined* (New York: Palgrave).

International war, however, is rare in Sub-Saharan Africa. Most of its conflicts, therefore, are labelled civil wars.

The second strain is what is sometimes called “new wars.”<sup>LXIX</sup>

Anthony Clayton notes that:

*“Clearly any rigid specific definition of warfare of the type used in international law or in conventions would leave anomalies in a study of conflict in late twentieth-century Africa.”<sup>LXX</sup>*

When Africa’s wars do not fit the conventional mould, they are often related to something that more closely resembles the “state-of-nature,” outside the ambit of Westphalian war.

Hans Magnus Enzensberger, for instance, states, “they are wars about nothing at all.”<sup>LXXI</sup>

This paper argues that these two categories, classical wars (old wars) and new wars do not descriptively fit many of Africa’s wars. Their accompanying explanations do no better.

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<sup>LXIX</sup> Mark Duffield, “Post-Modern Conflict: Warlords, Post-adjustment States and Private Protection,” *Civil Wars* Vol. 1, No. 1 (1998). Isabelle Duyvesteyn and Jan Angstrom, *Rethinking the Nature of War* (New York: Frank Cass, 2005); K. J Holsti, *The State, War, and the State of War* (New York: Cambridge, 1993); Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (New York: Cambridge Polity Press, 1999); Martin van Creveld, *The Transformation of War* (New York: The Free Press, 1991).

<sup>LXX</sup> Anthony Clayton, *Frontiersmen: Warfare in Africa since 1950*. (London: ULL Press, 1999), p. 7. He goes on to claim that only the Nigerian civil war, the Uganda-Tanzania war and South Africa’s warfare in Angola resemble the wars of Europe. (p. 205).

<sup>LXXI</sup> Cite in, Nicholas Kalyvas, “‘New’ and ‘Old’ Civil War: A Valid Distinction” Vol 54, No. 1 *World Politics* (2001), p. 103.

In the seams between classical wars, as they are understood, and the so-called new wars are what can be called *wars across states*. They are not a classical war because their players and staging are different.

They are not new wars, because they are, in fact political. *War across states* occur where the modern Westphalia nation state project, which concomitantly provided a context for understanding modern war,<sup>LXXII</sup> failed or is possibly incomplete. These wars, nonetheless, have a discernable morphology shaped by their distinct political processes. This paper argues that a discernable pattern of war is evident in Africa that does not fit the classical model or new war model.

The paper proceeds in four parts. First, we argue that many of Africa's wars that are typically treated as civil wars do not fit the definition of such wars. The next section looks at the fit between new wars and Africa's wars. Again, there are both descriptive and analytical weaknesses. In both cases, we would be better off reclassifying them as *wars across states*. Section three, therefore, examines the morphology of the Africa state system and its systemic impact on Africa.

It relates a different form of anarchy affecting the outbreak and character of war. It reveals that the structural factors shaping war in Africa make the peripheries of weak states the likely staging areas for war. And, militias that may or may not be associated

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<sup>LXXII</sup> See Charles Tilly, "War Making and State Making as Organized Crime," in Peter Evans, Dietrich Rueschemeyer, Theda Skopal, Eds. *Bringing the State Back In* (New York: Cambridge University Press, 1985), p. 169.

with a state, the most likely combatants.

Finally, the last section uses the case of the *war across states* in the eastern Democratic Republic of Congo, as an exemplar of how structure shapes Africa's wars. In René Lemarchand's words, the geopolitical map of former Belgian Africa has been fundamentally altered; it has led to the collapse of the state system.<sup>LXXIII</sup>

Rather than conflict either between states (international or interstate) or within states (civil or intrastate), the war there, as elsewhere in Africa, occurs across state borders. In general, these wars rarely have a discernable centre of gravity, at least in the classical sense of fighting over the proverbial line drawn in the sand. In a *war across states*, large tracts of territory bleeding across state borders provide the staging. As Paul Richards has related, the new wars of the post-Cold War era occur on the margins of weak and retreating states,<sup>LXXIV</sup> and the players are primarily non-state actors.

## War in Africa

Africa's wars usually are explained within the context of the Westphalia nation-state system. In the case of civil war, the state is a given. In the case of new wars, the focus is on state failure. Both models have an implied teleology. For civil war, it is that war

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<sup>LXXIII</sup> René Lemarchand, "Patterns of State Collapse and Reconstruction in Central Africa: Reflections on the Crisis in the Great lakes," *Africa Studies Quarterly: The Online Journal for African Affairs*, p. 4. <http://web.africa.ufl.edu/asq/v11/3/2.htm>

<sup>LXXIV</sup> Paul Richards, "New War: An Ethnographic Approach", in Richards (ed), *No Peace, No War: An Anthropology of Contemporary Armed Conflict* (Ohio University Press: Athens, 2005), p. 13.



is about the survival of the state. For new wars, it is that without a linear progress toward a completed Westphalia project, war must fall outside the Clausewitzian framework. Classical warfare is about state formation. Either the state expands through victory or a new state is born through defeat (either via an inter or intra state war). Africa's wars are neither about redefining territorial borders nor about who rules within a clearly defined territorial state.

In George Ayittey's words:

*"There is not a significant movement in Africa today that wants secession or a change in borders. No ethnic group divided by a frontier is demanding reunification; on the contrary, most such groups have learnt to exploit their situation commercially and politically."*<sup>LXXV</sup>

They are neither international nor civil wars.

## Civil War

Most *wars across states* are catalogued mistakenly as civil wars. Thus, by way of example, Jan Angstrom, notes that during the 1990s over ninety percent of armed conflict took place within rather than between states.<sup>LXXVI</sup> But many of these conflicts should be catalogued as a *war across states*. The definition of civil war may vary from scholar to scholar, but almost all emphasise

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<sup>LXXV</sup> George Ayittey, *Africa in Chaos* (New York: St. Martin's' Griffin, 1999), p. 43.

<sup>LXXVI</sup> Jan Angstrom, "Introduction: Debating the Nature of Modern War," in Duyvesteyn and Jan Angstrom, eds., *Rethinking the Nature of War* (New York: Frank Cass, 2005), p. 2.

that they are internal conflicts.<sup>LXXVII</sup>

Small and Singer's study *Resort to Arms* contains an accepted definition of civil war.<sup>LXXVIII</sup>

*"... any armed conflict that involves (a) military action internal to the metropolis, (b) the active participation of the national government, and (c) effective resistance by both sides."*<sup>LXXIX</sup>

Nicholas Sambanis adds that the end of a civil war is marked by a victory that produces a new regime.<sup>LXXX</sup> A civil war, therefore, is simply a war over the state itself. Either a new regime replaces an old regime or a new regime (and state) is created by succession. Civil war is common in Sub-Saharan Africa. But they are not the same as *wars across states*. Collier and Hoeffler's work on civil war, for instance, treats the Liberian and Sierra Leone civil wars as separate conflicts.<sup>LXXXI</sup> Given that the state is the unit of analysis, this is only natural. Liberia's first civil war lasted from December 1989 until November 1991 and its second civil war from October 1992 until November 1996. Sierra Leone had two civil wars, March 1991 to November 1996 and May 1997 until July 1999.<sup>LXXXII</sup>

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<sup>LXXVII</sup> Michael Brown, ed. *Ethnic Conflict and International Conflict* (Princeton: Princeton University Press, 1996).

<sup>LXXVIII</sup> Nicholas Sambanis, "What is Civil War," *Journal of Conflict Resolution* Vol. 48, No. 6 (2004), p. 816.

<sup>LXXIX</sup> Small and Singer, 1982, p. 210.

<sup>LXXX</sup> Sambanis, "What is Civil War," p. 830.

<sup>LXXXI</sup> Paul Collier and Anke Hoeffler, "Greed and Grievance in Civil War" (World Bank, Washington, D.C., 2001) pp. 21-22.

<sup>LXXXII</sup> *Ibid.*

But in 1991 Charles Taylor expanded the conflict in Liberia into Sierra Leone to gain that country's diamond fields.<sup>LXXXIII</sup> The first Sierra Leone conflict funded the second Liberian conflict. The two are listed separately only because the state is the analytical prism. But the conflict had a regional logic independent of a struggle over the dispensation of the state imbedded in what Pugh and Cooper see as regional economic, military, political, and social networks.<sup>LXXXIV</sup> The DRC is listed as having two civil wars in the post-Cold War era, the first started in 1996 and the second in started 1998. But by mid-1998 the conflict was no longer about capturing the capital of Kinshasa, as Laurent Kabila was already ensconced there. It was no longer a civil war.

In 1998, rebels captured the city of Kindu in the east and the following year there were three offensives in the north and southeast. What has been called "Africa's first world war," has been fought over and across the eastern periphery of the DRC. The military action in a *war across states* is not internal to the country. Fighting certainly occurs within a state, but this represents only part of the conflict. Unlike civil wars, in these conflicts effective resistance by the government sometimes disappears and the government's military fractures into competing militias fighting among themselves and against, or sometimes with, insurgents.<sup>LXXXV</sup> There are more than two sides and it is

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<sup>LXXXIII</sup> In 1991, Foday Sankoh started a war in Sierra Leone with the backing of Charles Taylor along the Liberian border as the leader of the RUF. The relationship between Sankoh and Taylor had begun in the 1980s when both men were in Libya. Sankoh traded diamonds to Taylor for guns.

<sup>LXXXIV</sup> Michael Pugh and Neil Cooper, *War Economies in a Regional Context: Challenges of Transition* (Boulder: Lynn Rienner, 2004).

<sup>LXXXV</sup> Will Reno has convincingly argued that, in fact, incumbent rulers in Africa's

often difficult to distinguish government forces from militias.<sup>LXXXVI</sup> The term “sobels,” for instance, was coined to describe the combatants in Sierra Leone – it signifies soldiers by night and rebels by day.

## New Wars in Africa

Three characteristics commonly distinguish what we can collectively call new wars for old wars. The former are apolitical, occur within states, and have no longer distinct battles and frontiers. We will consider each in turn. Scholars such as Kalevi Holsti and Martin van Creveld argue that the Clausewitzian notion of war cannot be used to frame “new wars.”<sup>LXXXVII</sup> At issue are three related concerns: what is political; what the role of the state in war is; and what the relationship between the political and the state is. In each case, explanations of war in the African context typically have been filtered through the Westphalian experience. But Africa has a different historical experience and different political trajectory.

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*weak states purposefully try to avoid centralising military command and, rather, try to manipulate factional conflicts with the military to their own advantage. Will Reno, “Insurgencies in the Shadow of State Collapse,” in Kaarsholm (ed), Violence, Political Culture and Development in Africa (Athens: Ohio University Press, 2006), p. 29.*

<sup>LXXXVI</sup> For instance, Stephen Ellis notes that early in the Liberian civil war, splits in Charles Taylor’s NPFL were evident. *The Masks of Anarchy* (New York University Press: New York, 2001), pp. 80-87. It later spawned the proliferation of warlord groups, as many as seven by 1997. Stephen Ellis, “Liberia’s Warlord Insurgency”, in Christopher Clapham (ed), *African Guerrillas*. (Indiana University Press: Bloomington, 2003), p. 154

<sup>LXXXVII</sup> Holsti, “the State,” p. 14; van Creveld, “The Transformation.”

The notion of what is political is framed by Clausewitz's notion of trinitarian war: the separation of government, the people, and the fighting forces.<sup>LXXXVIII</sup> But the lines between the government, the people and the army in Africa have long been blurred.<sup>LXXXIX</sup> The absence of a government, or its irrelevance in wars *across states*, seems to exclude these conflicts from the Clausewitzien notion of war, which means they are apolitical and relegated to the realm of the irrational. But in much of Sub-Sahara Africa, the separation of the public (government) and the private (citizens) has been a fiction. This is particularly true in the economic realm. In Patrick Chabal and Jean-Pascal Daloz's words:

*"The boundaries of politics are also porous: politics is seen legitimately to include many other, less obviously political, activities. Perhaps the most fluid in this respect is that which links political and economic enterprise."*<sup>XC</sup>

Many of the elements that, if not considered unique to new wars, are at least considered prominent characteristics of them, are in fact nothing new. Colin Gray, for instance, notes that intercommunal strife has been around for a long time.<sup>XCI</sup> Edward Newman shows that many factors attributed to "new

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<sup>LXXXVIII</sup> This is a problem, albeit minor, shared by Holsti and van Creveld. In their effort to distinguish old from new wars, they erase what make them all wars.

<sup>LXXXIX</sup> This can be traced back to pre-colonial times and was often also a condition of colonial rule.

<sup>XC</sup> Patrick Chabal and Jean-Pascal Daloz, *Africa Works: Disorder and Political Instrument* (James Currey: Oxford, 1999), p. 52.

<sup>XCI</sup> Colin S. Gray, "How Has War Changed Since the End of the Cold War," *Parameters* Vol. 35, Spring (2005), p. 19.

wars” are nothing new, including: criminal elements, ethnic cleansing, targeting civilians, and genocide.<sup>XCII</sup> Stathis Kalyvas points out that some scholars distinguish “old civil wars” from “new civil wars,” by saying the former have collective motivations while the latter have private motivations.<sup>XCIII</sup> The new war thesis emphasises private gain. Kalyvas, however, notes that private gain was hardly absent from past conflicts. John Keegan, challenging Clausewitz from a different tack states:

*“All regular armies, even the armies of the French Revolution, recruited irregulars to patrol, reconnoiter and skirmish for them; during the eighteenth century the expansion of such forces – Cossacks, ‘hunters,’ Highlanders, ‘borders,’ Hussars – had been one of the most noted contemporary military developments. Over their habits of loot, pillage, rape and murder, kidnap, extortion and systematic vandalism their civilised employers chose to draw a veil.”<sup>XCIV</sup>*

But a more important point needs to be made here. The nature of patrimonial rule in the post-colonial Sub-Saharan African state had already blurred the distinction between public and private. If a clear separation among government, army and people is a prerequisite for war to be defined as political, Sub-Sahara, by definition, has not witnessed much political war.

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<sup>XCII</sup> Edward Newman, “The ‘New Wars’ Debate: A Historical Perspective is Needed,” *Security Dialogue* 35, June (2004).

<sup>XCIII</sup> Nicholas Kalyvas, “‘New’ and ‘Old’ Civil War: A Valid Distinction” Vol 54 No. 1 *World Politics* (2001), p. 102.

<sup>XCIV</sup> John Keegan, *A History of Warfare* (New York: Vintage Books, 1992), p. 5.

The state is the central political actor in Clausewitz's notion of war. As Mary Kaldor points out, because new wars seemingly reverse the processes through which the modern state evolved,<sup>xcv</sup> they may be, therefore, something new. But, as Isabelle Duyvesteyn argues, you do not need a state to have a war.<sup>xcvi</sup> The third problem, the relationship between what is political and the state, hinges on the concept of rationality. The argument that the "new wars" are irrational is largely due to the teleological conclusion that if you are not fighting over the state, the conflict is irrational. Donald Snow, for instance, argues that because in many cases the conflict is not over the state, these wars have no clear military objective and share a common centre of gravity (rather than fighting over a centre of gravity).<sup>xcvii</sup>

There is no clear objective, other than private gain. There is no apparent common centre of gravity because it is difficult to clearly delineate the political forces doing the fighting – there is no home base and therefore no frontier. They are, therefore, Hobbesian "wars of all against all" with no political rationality.<sup>xcviii</sup> But as Ellis argues, in these wars violence is used to mobilise support,

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<sup>xcv</sup> Mary Kaldor, *New and Old War*, p. 5.

<sup>xcvi</sup> Isabelle Duyvesteyn, *Clausewitz and African War* (New York: Frank Cass, 2005), p. 5.

<sup>xcvii</sup> Donald Snow, *Uncivil Wars: International Security and the New Internal Conflicts* (Boulder: Lynne Rienner Publishers, 1996), See Duyvesteyn for a discussion of the "centre of gravity in a conflict" *Clausewitz and African War*, pp. 17-18.

<sup>xcviii</sup> This is also captured in the primordial versus instrumental explanation of ethnic conflict. In the former the conflict is driven by deeply ingrained historical hatred, in the latter by the political machinations of elites.

rather than combat an enemy; an inherently political act. It is not, necessarily, the “gratification of cruel instincts through mindless violence.”<sup>xciX</sup> And as Chabal states: “The view that such violence is ‘irrational’ or ‘atavistic’ does not carry much conviction since it would still have to be explained why it should have broken out when and where it did.”<sup>c</sup> To understand why *wars across states* are political, and why they do fit the Clausewitzian notion of war, we must first return to the mature Clausewitzian notion that war is bound by politics and is political in nature. Then we need to examine how politics works in Sub-Saharan Africa. Van Creveld, who has argued that Clausewitz’s trinitarian war model does not apply to the new wars,<sup>ci</sup> nonetheless summarises:

“It was one of Clausewitz’s most important contentions that war is a social activity. As such, war is moulded by social relationships-by the type of society by which it is conducted, and the kind of government which that society admits.”<sup>cii</sup>

Explaining post-Cold War conflict in Africa begins with understanding how institutional and structural factors shape the contours of politics and conflict there.

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<sup>xciX</sup> de Waal, :*Contemporary Warfare in Africa*,” in Mary Kaldor and Basker Vasheew, eds. *Restructuring the Global Military Sector, Volume I: New Wars* (Washington, D.C.: Pinter, 1997), p. 289.

<sup>c</sup> Patrick Chabal, “Violence, Power and Rationality: A Political Analysis of Conflict in Contemporary Africa,” in *Is Violence Inevitable in Africa* (Boston: Brill, 2005), p. 9.

<sup>ci</sup> *Ibid.*, p. 9.

<sup>cii</sup> van Creveld, *The Transformation*, p. 35.



## The Africa State System and the Nature of Anarchy

Unlike the Euro-centric Westphalia system, Africa is not made of self-contained unitary actors. Anarchy in Africa means something very different from the neorealist notion of anarchy.

Explaining post-Cold War conflict in Africa begins with understanding how institutional and structural factors shape the contours of its politics and the trajectory of its wars.

Africa's post-independence politics has been stubbornly neo-patrimonial. The patrimonial form of rule, which replaced the feeble effort of democratisation at the cusp of independence, can be defined by three essential characteristics. First, in contrast to the Weberian state, which is defined by impersonal and abstract legal-rational rule, the patrimonial state is defined by personal rule.

Second, the boundary between the private and the public is blurred and the state becomes the main means for accumulating power and wealth. Third, politics is structured around vertical patron-client relationships, typically centred on a "big man". Over time, patrimonial rule hollowed out the post-colonial state in Africa and created what is typically labelled weak states.<sup>ciii</sup>

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<sup>ciii</sup> *This is why they often are associated strongly with state collapse and why it is difficult to separate cause from effect. Van de Walle goes as far as to posit that it may be impossible to disentangle cause and effect. "The Economic Correlates of State Failure", in Robert Rotberg (ed), When States Fail (Princeton University Press: Princeton, 2004), p. 98.*

These states have trouble providing essential public goods, which would include or presuppose: a healthy bureaucracy, lack of corruption, growing Gross Domestic Product (GDP), and a functioning currency. Most importantly, the state progressively lost its monopoly over the legitimate use of force. In extreme cases, such as the Democratic Republic of Congo (DRC), Liberia, and Sierra Leone, it led to state collapse. The institutional impact of patrimonial rule on post-colonial African politics was exaggerated by the structural flaws inherited from the pre-colonial and colonial state in Africa. Sub-Saharan Africa subsequently struggled with securing political authority over its territory and people.

Historically, in much of pre-colonial Africa, groups escaped authority by moving farther away from what was perceived as oppressive authority. The control of people and resources was typically more important than the control over territory.<sup>civ</sup> Land was relatively abundant and populations relatively thin so this movement of people did not lead to conflict.<sup>civ</sup> In effect, traditional political kingdoms in Africa had difficulty projecting force beyond their core. This was true even of kingdoms that were relatively centralised. For example, the pre-colonial kingdoms, Luba, Lunda, and Kisale situated in what is modern day eastern DRC were highly centralised political systems, but their outer regions (periphery) were only loosely tied to the centre,

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<sup>civ</sup> J. Lamphear, "Sub-Saharan African Warfare", in J. Black (ed), *War in the Modern World Since 1815* (Routledge: New York, 2003), p. 171.

<sup>civ</sup> Jeffrey Herbst, "War and State in Africa", *International Security* Vol. 14, No. 4 (1990).

mainly through the payment of tribute.<sup>CVI</sup> There was conflict and competition over tribute tied to control over trade routes, but in many cases pre-colonial Africa's kingdoms had not consolidated geographical control over regions they ostensibly ruled. More importantly, rarely did one kingdom's expansion reach to the border of another kingdom leading to what would resemble inter-state war. Unlike the evolution of the Westphalia nation state system in Europe, hard borders had not yet formed at the time when these traditional political systems were conquered and ultimately fit into the containers of the colonial state. The Berlin Conference of 1884/85, creating the modern collection of African states with artificial borders often cutting across tribal or ethnic identities, continued this legacy.

It certified a state system where the political authority situated in the capital had legal suzerainty over a geographically defined space, but lacked political authority over all the people that lived within that space, particularly the farther you traveled from the capital. This was telling because in many cases the people in the periphery had a different identity than the people in the centre. But, of course, the majority of states in the international system are not homogeneous. The more important legacy of Berlin for the trajectory of the post-Colonial state is that the African colonial state consisted of either a small trading outpost, and/or of a capital. There was little effort to project authority into the hinterland. Colonial powers were more interested in connecting their colonies to the metropole than in connecting them to their hinterlands. This is why so many of Africa's capitals are located

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CVI Jan Vansina, *Kingdoms of the Savanna* (University of Wisconsin Press: Madison, 1966), p. 82

on the coast or borders, rather than in the centre of the state. While the colonial state in Africa had relatively clearly marked boundaries, there was little effort to knit the patchwork of ethnicities with the accepted borders into the common fabric of a modern state.

The post-colonial state, at least during the Cold War, was merely a continuation of quasi statehood<sup>CVII</sup> that characterised the colonial state. The Charter of the Organization of African Unity (OAU) certified the Berlin rules – the inherited borders of the African states were held sacrosanct. The founding fathers of the post-colonial states in Africa inherited a state created with a slide-rule at the 1884/85 Berlin conference. They lived in glass houses, because they had inherited lands beyond their political reach. In fact, while there were some early attempts at changing state borders, mostly via succession as in Biafra and the two Katanga crises in Zaire (DRC), the map of Sub-Sahara Africa looked essentially the same at the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries. The post-colonial political order in Africa paradoxically, or perversely, resembled the colonial order. This is the last undertow of the perfect storm shaping the converging currents of pre-colonial, colonial, and post-colonial/post Cold War Africa into a *war across states*.<sup>CVIII</sup>

The institutional and structural legacy of Africa's state

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<sup>CVII</sup> For a discussion of "quasi-statehood" see, Robert Jackson, "Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood" *World Politics*, 33, 1(1982).

<sup>CVIII</sup> Antecedent conflict in Africa remain not only cause but constitutive of that new order. For instance, Stephen Ellis traces Africa's wars to its independence struggles and "low-intensity" conflicts of the Cold War era. "The Old Roots of Africa's New Wars", *International Politics and Society* 2 (2003), pp. 32-33.

development, therefore, has made it difficult for them to project authority into their hinterland. Aristide Zolberg talked about *syncretic* societies where the centre of a newly independent state in Africa had not expanded sufficiently to create an integrated society – they could not reach out to their periphery.<sup>CIX</sup> Stathis Kalyvas notes that actors at the centre seeking power in Sub-Saharan Africa formed alliances with peripheral actors.<sup>CX</sup>

Like their precursors, the post-colonial state had a strong urban bias. Most African countries had monopsonistic markets - one buyer; in this context it is the government - that used marketing boards (themselves a legacy of colonial rule) to generate rents for patrimonial networks.<sup>CXI</sup> This not only contributed to the polarisation of society, but, as well, by keeping producer prices of agricultural goods artificially low it contributed to the poverty of the regions distant from the urban areas.

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<sup>CIX</sup> Aristide Zolberg, "The Structure of Political Conflict in the New States of Africa", *American Political Science Review*, Vol. 62, No. 1 (1968), p. 71.

<sup>CX</sup> Kalyvas notes that civil wars are a transformation of centre and periphery quest for power, "The Ontology of "Political Violence: Action and Identity in Civil Wars", *Perspectives on Politics*, Vol. 1, No. 3 (2003), p. 486.

<sup>CXI</sup> The classic work remains, Robert Bates, *Markets and States in Tropical Africa: The Political Basis of Agricultural Policy* (University of California Press: Berkeley, 1981).

The nascent Africa states not only inherited their borders and shape, they depended on the international community for legitimacy – what Jackson and Rosberg famously labeled the *juridical state*.<sup>CXII</sup> The international community recognised them but they lacked domestic legitimacy – particularly the farther you went from the state capital. The end of the Cold War was the match to the African tinderbox. Three things happened; each tied to the loss of external patronage that often propped up the post-colonial patrimonial state. First, the political compromise that sustained the post-colonial state, between the rulers and their specific class of supporters was no longer sustainable. Second, the hegemony of the state apparatus broke down. Finally, the sources of legitimacy and influence were lost. After years of corruption and economic mismanagement, the African state failed to provide the essential public goods necessary to sustain statehood.<sup>CXIII</sup> This reality got worse the farther you travelled from the capital. Infrastructures, from hospitals and schools to roads, deteriorated. By way of illustration, Zaire went from having 31,000 to 3,500 miles of road.<sup>CXIV</sup>

Patrimonial networks centred on the “big man” began to fracture. This meant that the institutional sinews, already strained and weakest in the periphery, holding the state together

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<sup>CXII</sup> Robert Jackson and Carl Rosberg, “Why Africa’s Weak States Persist: The Empirical and Juridical in Statehood”, *World Politics*, Vol. 35, No. 1 (1982).

<sup>CXIII</sup> Robert Rotberg, “The Failure and Collapse of Nation-States: Breakdown, Preventions and Repair,” in Rotberg (ed), *When States Fail: Causes and Consequences* (Princeton University Press: Princeton, 2006), pp. 2-3.

<sup>CXIV</sup> Will Reno, *Warlord Politics and African States* (Lynne Rienner Publishers: Boulder, 1998), p. 154.

weakened and in the extreme cases snapped. The loss of external patronage was often the nail in the coffin. Zaire (DRC) went from the favoured son status to pariah in the eyes of the United States. The International Monetary Fund (IMF) and World Bank were no longer as willing to engage in the “ritual dance of debt relief” with Mobutu. In 1991, the IMF announced that Zaire would receive no new loans.<sup>CXV</sup> As well, Liberia, a reliable U.S. ally during the Cold war was cut off.<sup>CXVI</sup> Over time, the combined institutional and structural flaws of the post-colonial African state can cause the tenuous ties between the centre and the periphery to snap. In the worse case scenarios – it triggers *wars across states* and state collapse. The ability of the state to project power beyond their base of support, typically clustered in and nearby the capital city, progressively atrophies. The peripheries of these weak states, never really under control of these countries, become enhanced centres of opportunity and accumulation. Peripheral actors, once tenuously tied to the centre, look across the border rather than to the centre of the state. The peripheries of these states increasingly generate informal parallel networks that crisscross borders.

In this way, they come to resemble pre-colonial Africa, where people escaped the oppressive reach of the state by moving farther away into empty or sparsely populated areas, what some call Africa’s bad-lands. But, with a crucial difference, these borderlands have become densely populated. The land is worth fighting over. In the extreme case, marginalised borderlands play a

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<sup>CXV</sup> *Ibid.*, p. 153.

<sup>CXVI</sup> *Ibid.*, p. 88.

critical role in war economies fueling wars *across states*. Much as Patrick Chabal and Jean-Pascal Daloz explain, neo-patrimonialism provides a form of order; in this case it becomes an adaptation of form to function – patrimonialism writ regionally.<sup>CXVII</sup>

## War across States and the Democratic Republic of the Congo

The *war across states* in the DRC can only be understood within structural determinants of the African state system. Its structure is distinct from that of the Westphalia system, but with analogous effects for the causes of its wars. Unlike the Westphalia system, the units that make up the Africa state system do not consist of unitary states actors, but of varying degrees of weak states. In particular, rather than relatively hard-shelled Weberian states, we have soft-shelled neo-patrimonial states. Zaire under the rule of Mobutu Sese Seko was the prototypical neo-patrimonial Africa state.<sup>CXVIII</sup> His rule progressively hollowed out the state, and as his political ambit shrank, his ability to secure the states periphery atrophied.<sup>CXIX</sup> But the instability in the DRC's periphery

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<sup>CXVII</sup> See, Chabal and Pascal Daloz, *Africa Works. Tull makes this point in discussing the nature of the conflict in eastern DRC. "A Reconfiguration of Political Order?, p. 435.*

<sup>CXVIII</sup> For the best description of neo-patrimonial rule under Mobutu see, Thomas Callaghy, *The State-Society Struggle: Zaire in Comparative Perspective* (New York: Columbia University Press, 1984); For the progressive fragmentation of the state engendered by patrimonial rule see, William Reno, *"Warlord Politics and Africa States* (Boulder: Lynne Rienner Publishers, 1998), chapter 5.

<sup>CXIX</sup> *There is a long history of conflict in post-colonial Zaire's (DRC) history.*



can only be understood in a regional context that shapes the African state system. In this system, clusters of more-or-less weak states have peripheries that interact to form a common penumbra with attendant insecurity. As has been typical in Africa, the peoples of this penumbra have often moved to escape the reach of oppressive rule, from the overlapping areas of states that define that penumbra. For instance: in 1960-61, 60,000 Tutsis fled to Burundi from Rwanda; in 1988, Hutus fled from Burundi to Rwanda; and the 1993 Rwanda genocide led to a massive migration into the DRC.

The final marker of a failed Westphalia project is when the centre all but abdicates control of its periphery. The tenuous alliances between the centre and the periphery are replaced by cross border alliances. The conflict in the eastern DRC fits this pattern. The second war in the eastern DRC (1998) is over the control of territory outside the reach of the government in Kisangani and fought by combatants that are not controlled by any one state, although they form alliances with regional states.<sup>CXX</sup> As Beth Whitaker argues, the conflict in the DRC is by nature regional because: “[D]ue to the cross-border alliances and linkages between actors, regional security concerns and domestic political interests essentially became one and the same.”<sup>CXXI</sup>

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<sup>CXX</sup> For a good compendium describing and explaining the war in the Eastern DRC see, John Clark, (ed) *The Africa Stakes of the Congo War* (Palgrave: Palgrave, 2001); Denis M. Tull, ‘The Democratic Republic of Congo: Militarized Politics in a Failed State’, in Morten Bøås and Kevin Dunn (eds), *African Guerrillas: Raging Against the Machine* (Lynne Rienner Publishers: Boulder, 2007). For a contemporary study of the conflict see, Morten Bøås, “Just another day’ – the North Kivu security predicament after the 2006 Congolese elections” *African Security*.

<sup>CXXI</sup> Beth Whitaker, “Refugees and the Spread of Conflict: Contrasting Cases in Central Africa”, *Journal of Asian and African Studies* Vol. 38, No. 2.3 (2006),

The conflict centred on the DRC is part of a long-running struggle fuelled by a competition over, land, regional political power, and access to patrimonial resources in the provinces of North Kivu and South Kivu, between *autochtones* (“indigenous” Congolese) and Kinyarwanda speakers (people who trace their heritage to Rwanda) living in eastern DRC, as well as Ituri and Katanga. What is in essence a regional conflict centred on the eastern DRC has had two phases.

The first which led to the overthrow of Mobutu Sese Seko, is often considered an intra-state war. But the Alliance des Forces Démocratiques pour Libération de Congo. (ADFL) led by Laurent Kabila that fought its way to the capital and overthrew Mobutu Sese Seko was planned in Rwanda and backed by that country and Uganda. The second has a logic more clearly different from a civil war or the 1996 war. It evolved independent of any one state’s goals in the region. It is a *war across states*. The two phases of the conflict are, in fact, connected and part of a larger regional *war across states*.

As Séverine Autesserre summarised:

*“... local antagonisms combined with the retreat of the Congolese state, the ruling strategy of Mobutu which enhanced local antagonisms, and the arrival of thousands of Rwandan Hutus after the 1994 genocide, precipitated **two** [my emphasis] conflicts in the late 1990s.”<sup>CXXII</sup>*

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p. 223.

CXXII Séverine Autesserre, “Local Violence, National Peace? Postwar “settlement” in the Eastern D.R. Congo, “African Studies Review Vol. 49, No. 3

The conflict centred on the Democratic Republic of Congo (DRC) was triggered by the aftermath of the genocide in Rwanda.

*Interahamwe* (escaped Hutus after the fall of the Hutu regime in Rwanda) exacerbate tensions in eastern DRC. By 1996, the Zairian state was threatened by a rebellion of the Banyanwanda (Congolese citizens of Tutsi origin), ADFL, led by Laurent Kabila. The ADFL was supported by Rwanda and Uganda.

Early in this conflict, the DRC national government was resisting an insurgency whose express purpose was to overthrow the Mobutu Sese Seko regime. Nonetheless, Jermaine McCalpin states, Kabila had no deep concern for the restoration of the Zairian state.<sup>CXXIII</sup> As Koen Vlassenroot argues, "... the end of Mobutism was not the result of state collapse but was caused by local and regional dynamics that fell completely outside the zone of control of the central government."<sup>CXXIV</sup> Thus, even as the capital of Zaire (DRC) was captured, a *war across states* intensified.

Laurent-Desire Kabila's AFDL forces captured the capital Kinshasa in a little over half a year. The conflict, however, later took on a different direction. The second conflict was not a civil war. As successive Kabilas, first Laurent and then his son Joseph, respectively captured and held state power, the conflict evolved into something other than a struggle over the state.

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(2006), p. 3.

CXXIII Jermaine McCalpin, "Historicity of a Crisis: The Origins of the Congo War," in John Clark, Ed. *The Africa Stakes of the Congo War* (New York: Palgrave, 2002), p. 47.

CXXIV Koen Vlassenroot, "A Societal View on Violence and War: Conflict and Militia Formation in Eastern Congo", in Preben Kaarsholm (ed), *Violence, Political Culture and Development in Africa* Ohio University Press: Athens, 2006), p. 49.

The second conflict was triggered by the Rassemblement Congolais pour la Démocratie (RCD) insurgency, largely in the beginning supported by Rwanda and Uganda, who had split with Kabila. (They ostensibly sought a buffer between themselves and their unstable western neighbour). The RCD originally wanted to capture the capital (For this purpose, Rwanda airlifted 400 troops to the Western Bas Congo Province.) It failed, largely because of regional support for Kabila from Angola, Namibia and Zimbabwe. Instead, it turned its attention to the eastern part of the DRC.

The Rwanda-Uganda alliance subsequently fractured and a newly-created insurgency group, the Mouvement pour la Libération du Congo (MLC) led by Jean-Pierre Bembe and backed by Uganda, gained control of northeastern DRC. In the second phase of this conflict, the DRC military became, at times a bystander, at times part of state resistance, and at times joined stateless militias. Effective resistance by the government disappeared while the government's military fractured into competing militias who fought among themselves and against, and sometimes with, the insurgents. In René Lemarchand's words:

*"For the majority of the troops [DRC] sent out to crush the rebellion the purpose of their assignment was not to defeat the enemy, but to take maximum advantage of the situation or engage in one "pillage" after another. As the tide began to turn, many ended up selling their weapons to potential rebels or joining their ranks."*<sup>CXXV</sup>

In the DRC's *war across states*, the conflict has continued,

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CXXV Lemarchand, *"Patterns of State Collapse,"* p. 10.

intensified, and spread even after the capital was captured and a new regime replaced the old; the insurgents no longer engaged a force representative of the state. When the state did remain an active player it was often a contiguous state rather than the state where the conflict was centred. In the eastern DRC, Rwanda and Uganda were often more active than the Kisangani regime. But the states agents involved in the conflict do not necessarily represent state interests. They are no longer pursuing the strategic interests of those respective countries, but rather manipulating private militias for personal gain. The staging of this conflict, simply, is different than that of a classical war. The centre of gravity is neither the border between states nor the capital of any one state.

The players in the conflict do not represent state interests. It is difficult to determine who is fighting whom and over what. Originally supported by a united Uganda- Rwanda front, in June 1999, the rebel movement in the DRC soon split into three groups. The Uganda and Rwanda backed forces subsequently battled each other deep inside the DRC.<sup>CXXVI</sup> The fracturing of organized combatants in the eastern DRC did not stop there. In January of 2008 a peace deal was signed between the Congo government and North Kivu rebels, including the National Congress for the Defence of the People (CNDP) insurgency led by Laurent Nkunda; it did not hold. The strongest militia in January 2009 was the FDLR made up of Rwandan Hutu insurgents, with 6,500 fighters spread over territory four times the size of

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<sup>CXXVI</sup> Thomas Callaghy, Ronald Kassmir, Robert Latham, in Callaghy, Kassmir, Latham, eds., *Intervention and Transnationalism in Africa: Global-Local Networks of Power* (New York: Cambridge University Press, 2001), p. 3.

Rwanda. The CNDP insurgency led by Laurent Nkunda (captured on January 22<sup>nd</sup>), ostensibly represented the interests of DRC Tutsis. In between, more or less, is the Congolese national army, FARDC. The CNDP and the FARDC have a common ostensible objective in suppressing the FDLR in the eastern DRC, but their common interest's ends there. In fact, FARDC battalions trained by UN forces (MONUC) to fight the FLDR on September 25, 2008 attacked Nkundu's forces. Renegade FARDC elements jointly mine cassiterite and other minerals with the FLDR. These, however, are only the roughest cleavages. There are also numerous other groups, including Mai Mai militias, some of which are open to reintegration in the FARDC, and others that are overtly resistant to such reintegration.

## Conclusion

Many of Africa's wars do not follow the same script that classical wars (civil or international) follow. This has important implications for peacemaking and peacekeeping. In particular, the United Nations and western power involved in peacekeeping in the DRC confuse the end of a "classical war" with the end of conflict. After the formal end of the second "civil war" in the DRC an *Economist* headline stated: "The war is dead, long live the war."<sup>CXXVII</sup> In the eighteen months after the 2002 "Global and Comprehensive Peace Agreement" signed in Pretoria, South Africa, 31,000 people were killed each month.<sup>CXXVIII</sup>

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<sup>CXXVII</sup> *The Economist*, 17 July 1999.

<sup>CXXVIII</sup> Filip Reyntjens, *The Great African War: Congo and Regional Geopolitics, 1996-2006* (New York: Cambridge University Press, 2009), p. 208.

After the 2006 elections in the DRC (as part of the 2002 peace agreement), the conflict actually intensified.<sup>CXXIX</sup> Locating the centre of gravity is part of the problem. The 2002 Pretoria accord left out the Movement for the Liberation of Congo (MLC) and the Congolese Rally for Democracy/Goma (RDC/G). In January 2008, the DRC signed a peace accord in Goma with numerous armed groups in the eastern DRC, including the CNDP. In that year the CNDP and the FARCD continued to fight.

As late as March 23, 2009, the DRC signed separate peace agreements with the CNPD and armed groups from North Kivu and South Kivu. Earlier that year it teamed up with Rwanda to fight the FDLR. Just as the conflict in the DRC belies the logic of classical war, the solution to the conflict will be bedevilled by working within the constraints of the Westphalia system. Séverine Autesserre astutely notes:

*“The development of a system of sovereign states, which upheld the doctrine of nonintervention... and was codified in the 1648 Treaty of Westphalia, reinforced the diplomats’ tendency to interact with primarily with state representatives [in the DRC].”<sup>CXXX</sup>*

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<sup>CXXIX</sup> Pierre Englebert and Denis M. Tull, “Post conflict Reconstruction in Africa: Flawed Ideas about Failed States” *International Security* Vol. 32, No. 4 (2008), 132. For details on the power sharing arrangement after the election see Lemarchand, *The Dynamics of Violence*, 261.

<sup>CXXX</sup> Séverine Autesserre, *The Trouble with the Congo: Local Violence and the Failure of International Peace- building* (New York: Cambridge University Press, 2010), p. 94.

The nature of the African state system, the politics of its interacting parts – state and non-state – as distinct from Westphalia state system need better understanding to foster a complete explanation of Africa's post-Cold War conflicts.