

THE AFRICAN PROSPECT

THE JOURNAL OF CONTEMPORARY AFRICAN ISSUES AT THE
INTERNATIONAL INSTITUTE FOR JUSTICE AND DEVELOPMENT

THE AFRICAN PROSPECT

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ORGANIZATIONAL SUMMARY

In 2001, the International Institute for Justice and Development (IIJD) was founded as an international not-for-profit, consulting, and educational organization that specializes in justice and development issues. The mission of the IIJD is to fight global poverty by promoting justice and providing innovative development solutions for long-lasting positive change in poor communities and developing countries. The IIJD believes that justice and development programs have focused on short term aid relief for too long. As a result, the underlying causes of the development crisis and persistent poverty in poor communities around the world are ignored or even exacerbated.

The IIJD seeks to alleviate poverty by dismantling systemic barriers and addressing those institutional weaknesses that create an environment of corruption, exclusion, repression and economic stagnation. Our approach to development is a top-down and bottom-up strategy. Our programs create the space at the top to allow for institutional and systemic reforms, while we address civil society building through a bottom-up approach. Emphasizing community participation, these projects include working with grassroots organizations and local experts, such as universities and a diversity of professionals, on sustainable development projects. The IIJD firmly believes that poverty can be alleviated and development sustained only by combining systemic or institutional reforms, infrastructure building, and civil society strengthening through local and community-based organizations.

The IIJD is committed to making a difference with its excellent understanding of international development issues and an advanced knowledge of the legal, political, cultural, social and economic environment of most African countries. Rather than speculating on the needs of communities and imposing generic solutions, the IIJD provides communities with the necessary resources and tools for defining problems, prioritizing change, and implementing solutions, with the active participation of local citizens.

Based on participation, empowerment, self-reliance, and local sustainability, the IIJD looks at the big picture of poverty, underdevelopment, and insecurity. Our work goes beyond the mere treatment of the symptoms of poverty to confront the causes and contributors to the problem. We seek to tap the human potential and leverage the power of individuals and communities to unleash a force for change and progress. We focus on creating tools, opportunities and accessible services that help the less fortunate get on their feet to start more productive and joyful lives, while helping to advance sustainable change.

By assisting the efforts of local communities, bringing together members of civil society and government to address relevant issues, and by building an international constituency of citizens dedicated to reform, the IIJD promotes peace, understanding, justice, and development for a better and safer world.

IIJD is a tax exempt 501(c) (3) organization.

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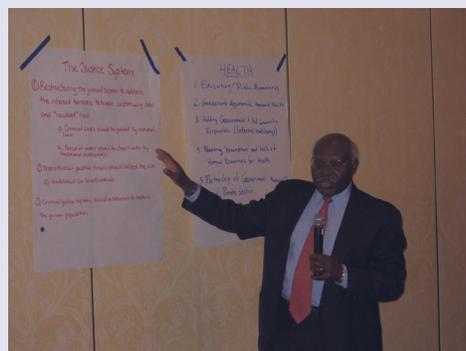
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Preface

IIJD and the African Development Crisis: The 2006 ICSAA

Despite decades of work by development programs in Africa, millions of Africans are still living far below the poverty line. Genuine efforts to annihilate extreme poverty in Africa have failed to make lasting changes. Most development organizations emphasize the need to remedy the symptoms of poverty; the **International Institute for Justice & Development (IIJD)** works to confront its underlying causes.

In direct line with its mission and approach, IIJD hosted the first **International Conference on the State of Affairs of Africa (ICSAA)** on October 26, 27 and 28 2006 at the Boston Quincy Marriott Hotel to address the root causes of the African development crisis.

ICSAA was organized in an effort to reach a strategic consensus on what the root causes of Africa's development crisis and poverty persistence are and to set priorities on how to resolve the crisis by creating a more collaborative and effective plan for future development endeavors. The strategic objectives of the conference were to turn the current focus of development away from temporary emergency relief methods and toward more sustainable solutions, which ordinary Africans believe will work best for them.

Development experts on Africa and academics and professionals living in Africa were included in

the planning and programming of the event. The IIJD assembled a diverse group of academic scholars, development professionals, community leaders, entrepreneurs, philanthropists and members of the NGO community, all sharing the common goal of alleviating the development challenges that so many African people experience on a daily basis.

Over 30 highly qualified experts and lecturers contributed their work to the first ICSAA. With an extensive knowledge of the challenges Africa currently faces, each member of the program presented their original work for discussion on how to implement long term solutions to poverty and underdevelopment. Her Excellency Ellen Johnson-Sirleaf, President of Liberia, contributed to the effort with a special message of support.

The 2006 ICSAA discussions focused on several areas of development and justice. On the morning of Saturday, October 28th during the goals setting plenary session, the participants drew up preliminary strategies after three days of intensive and interactive debate and dialogue. The findings, resolutions, and recommendations that follow are a summary of the key points raised by the delegates and participants of the 2006 ICSAA.



Some of the ICSAA participants in front of the recently drafted consensus resolutions.

Special Message of Support

Her Excellency Ellen Johnson-Sirleaf, President of Liberia

“I’d like to congratulate the International Institute for Justice and Development and its president, Benjamin Ngachoko, for this initiative. Let me also congratulate the Conference Director, the Secretariat, and all of those who have contributed to getting this program underway; the speakers and the researchers, who have been able to do exemplary work on assessing where Africa is today, what are some of its challenges, and some of its potential. This conference is very topical for the work we are doing in Africa today.

As many of you know, Africa faces some very serious challenges; the challenges of ensuring that we maintain peace and stability to enable us to carry out our development agenda. The record shows that in many cases, particularly for post-conflict countries, of which Liberia is one, unless there’s an effective and timely response to the needs of the people, the chances of slipping back into chaos are very great. Also, the challenges of sustainable growth and development, continuing to make progress on the environment that will attract private capital and private investment, making solid investment in our young people who are increasingly a large segment of the population in many of our countries, and ensuring that the role of women is enhanced. All of those challenges our countries are trying to meet.

But, at the same time, Africa has great potential. Its resources are vast: mineral resources, agriculture resources, marine resources, and most importantly, our human resources both at home as well as the thousands and thousands that are in the Diaspora. Our challenge is to harness these resources, to adopt proper economic policies, to open up political space, to ensure efficiency, accountability, and transparency in government



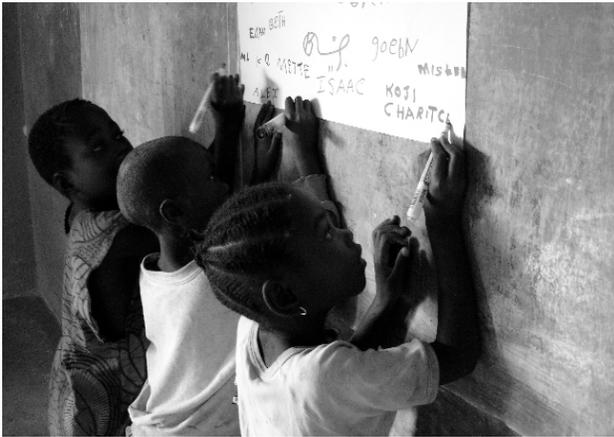
operations, and to make sure our justice system works. These are the areas where the IJJD will bring to bear, through its research and analysis, the options that African countries can look at, as we attempt to carry out our sustainable growth and development.

Africa’s development is not only important to the African continent and its people, but also important to the world as one of the last frontiers with commodities that can be used for global development, and as a means of assuring that we stem the flow of migration so our people remain home. The partnerships that will be developed between Africans and these external institutions will be important if we are to achieve our development goals. I’m optimistic that the new breed of leadership that is now emerging all over the African continent will be able to deliver all of these promises. It will be able to guarantee for the future of Liberian youth a land in which they can take a stake, make important contributions, and their future will be full of promise and hope.

Thank you all for being in this conference. Thank you for the contribution which you will make to African development.”

RE-CONCEPTIONALIZING THE EVOLVING ISSUES OF NGO-AFRICAN STATE RELATIONS

EVE SANDBERG



Non governmental organizations play a critical role in mediating state-society relations on any continent. In Africa, the roles of non governmental organizations and NGO-state relations can be understood, in part, through analyzing the periodization of NGO-state and external funding relations that evolved or declined due to political, economic, or natural phenomena.

This paper identifies the evolution of NGO-state and external party relations and examines the roots of what is often an adversarial relationship between African states and the non governmental organizations within their borders.

In response to the subtitle of our collective project, “Building Consensus and Setting Priorities to Resolve the African Development Crisis,” we can, armed with an understanding of the evolving relations among states, NGOs, and external donors, offer strategies for effective NGO-African state relations. Specifically, the thesis of this paper is that state leaders must understand that the nature of NGOs varies greatly, just as regime types/state administrations vary greatly, and that alternative practices between states and NGOs can and should be formulated in order to

achieve productive relations. There is no one set of relations that can be applied across the spectrum of NGOs and state formations. However, we can demonstrate that collaboration by state and service delivery NGOs is a win-win situation for states, NGOs and also for their African communities. States face challenges because foreign donors or International NGO partners (INGOs) are supporting civic or politically active NGOs, and thus the INGOs must take accountability for these challenges. They cannot simply support African adversarial NGOs and not simultaneously engage state officials about their response to that sector. The challenge of the next decade will be for African state leaders and donors, along with their political or civic NGO leaders, to organize productive relations that benefit local African populations.

The sections of the paper are as follows: First, I analyze the changing NGO-state formations over time beginning in the pre-colonial period until the recent democratic transition period. Then, I identify the underlying adversarial concerns of state and NGO leaders that work to prevent effective policies that can benefit African citizens. Third, I argue for varying policy strategies by states and NGOs depending on the nature of the work performed by the NGO. Fourth, I argue for international partners of African political/civic NGOs to be more pro-active about the results of their actions on the Africans with whom they work.

I. Periodizing African State-NGO Relations

A. African Non Governmental Organizations in the Pre-Colonial and Colonial Eras: From Self-Help Societies to Professional And Political Organizing

Prior to the establishment of colonial boundaries, when African traditional political formations could be found throughout Africa, two NGO-like associations existed: self help disaster societies and burial societies. (Jenkins 1994; Tripp 1994) These organizations functioned as local community organizations that provided a social safety net for Africans trying to cope with disaster and death. These associations linked Africans beyond the family compound to their friends and neighbors and to their clan members.

During the Colonial Period when foreigners controlled the state apparatus, Africans organized themselves into nongovernmental organizations to:

- Secure representation in the labor sector through labor unions.
- Assert control over their own trading activities through trade associations.
- Associate through religious/church organizations.
- Promote skills acquisitions and secure jobs through professional associations.
- Create independence movements.
- Create political parties to contest for state power, as political parties became a forum acceptable to the occupying powers in the final years of colonial rule.

Often, it was the leaders of African non governmental organizations in the form of professional associations or trade union activists who went on to found independence movements that organized Africans to challenge the colonial state's control of its African territory. Likewise, leaders of professional associations and trade union activists often were responsible for founding political parties as a way to position themselves as legitimate claimants to state power in the eyes of the colonial regimes.

As can be seen by the above discussion, during the colonial period, many African non governmental organizations were oppositional organizations to the (colonial) state. Once Africans achieved independence, therefore, many new African leaders believed that the need for such organizations no longer existed as it was the ambition of newly independent state leaders to provide services and political voice for

the African population. Additionally, many African leaders of the (colonial period) NGOs were absorbed into the independent state eliminating the effective leadership of the organizations.

B. The Post-Colonial Independent State: Disbanding Civic Action Non-Governmental Organizations and Binding Civil Society to the State

Africa's new ruling parties preferred party mobilization of state affiliated organizations such as women's organizations, youth associations, and labor movements to independent non governmental organizations. Citizen associating was thought to be best achieved through state-led organizations. The new state leaders believed that "state building" should be a top priority for Africa's newly independent states. The leadership of many colonial organizations such as trade unions or independence movements as well as transitional political parties was brought into the bureaucratic apparatus of new African states. National unity and state support and engagement was demanded of all citizens as the new state leaders argued that with scarce resources, and the need to build state capacity, all attention should be focused on and given to the state, not to competing independent organizations.

For the most part, independent organizations retained legitimacy in only one arena. Religious organizations and brotherhoods, and church related organizations were not pressured to come under the state's umbrella uniformly across the continent. For example, in some West African states, religious brotherhoods were tied to political parties and often constituted by social networks with links to the state. In Southern African states, however, most church groups retired from politics following the achievement of independence.

In return for demanding unity and loyalty from its citizens, African state leaders believed that they could provide for the welfare of Africans who had secured few resources with which to live due to the restrictions that had been placed on African educational and occupational options during the colonial period. Moreover, Africa's newly independent citizens had high expectations

concerning the state's ability to secure resources and direct those resources toward the improvement and enrichment of its black African citizens.

During the post-independence period, the ruling parties in most African states came to believe that even competing political parties had to be proscribed. Likewise, non governmental organizations in the political and civic action realms were effectively banned.

Yet, during the 1960s and 1970s, non governmental organizations were constituted in the service delivery arena as it became increasingly clear that despite its intentions, the African state lacked the capacity to effectively deliver basic services needed by its historically disadvantaged citizenry. Additionally, in the early 1970s, the threat of natural disaster demanded an organized response for African citizens. As government service capabilities were limited, the early 1970s saw NGOs able to work effectively to relieve citizens faced with drought, or locusts, or flooding.

During this period, International Non Governmental Organizations (INGOs) found local partner NGOs with whom to work to offer relief services. In many areas, these INGOS and their local partners replaced churches and missionaries as the organizations in the community to whom citizens looked when faced with difficult times.

C. The 1970s: The Legitimization of NGOs, And the Growth of Service Delivery Non-Governmental Organizations

Certainly African states were dominant in the social formations of African countries during the early 1970s. Most African states had created parastatal organizations and most African states intervened in state and local markets in numerous ways. Thus, most African states could not be characterized as "liberal." However, in Africa, in contrast to the situation in the West, most of the NGO sector did not respond in number or activities according to levels of state spending, but rather to levels of external INGO and other foreign donor spending, whether this additional spending was by foreign governments, foundations, or multilateral organizations. Most studies that focus on West-

ern state-NGO relations demonstrate that when the state spends and provides for services, there is little room left for NGOs. When the state does not provide, NGOs fill the gap. The same is true for Africa, except there is a third stakeholder in this dynamic. Out-of-country funding of NGOs is required in Africa, as few Africans accrued resources during the colonial period due to the restrictive colonial economic laws for Africans.

It also is important to consider another phenomenon that was occurring in the early 1970s. The legitimacy of international not-for-profit organizations as reliable international actors was expanding. The United Nations provides a clear example of this trend. As can be seen in the history of the United Nations, from its own beginnings it was coupled with associative International Non Governmental Organizations such as the International Labor Organization (ILO). The ILO had been founded after the First World War but was affiliated with the United Nations when it was launched after the Second World War. Thus, labor unions based in many advanced capitalist countries that worked closely with the ILO had a voice in international affairs through the ILO's activities vis à vis the United Nations throughout the post World War II period. The United Nation's charter also granted consultative status to NGOs operating alongside the Economic and Social Council (ECOSOC).

But the early 1970s saw a quantum leap in NGO legitimacy and in the activities that they carried out in tandem with the United Nations. At the 1972 United Nations Conference on the Human Environment in Stockholm, Sweden, a Concurrent NGO Forum was conducted alongside the official forum that housed official representatives from member states of the United Nations. The Concurrent NGO Forum created a precedent for future United Nations conventions. Non Governmental Organizations were seen as legitimate participants in debating and providing information concerning contentious international issues.

When the International United Nations Conference on Women was held three years later in Mexico City (in 1975), unofficial participants and NGO leaders and members once again created a parallel forum to consider the

topics of debate and negotiation. Never again would NGO leaders or activists believe that only official state representatives could reserve the right to debate policy at international forums.

“Out-of-country funding of NGOs is required in Africa, as few Africans accrued resources during the colonial period due to the restrictive colonial economic laws for Africans.”

In the mid-1970s, the United Nations undertook one other initiative that contributed to the legitimation of international NGOs. During 1975 and 1976, the United Nations Non-Governmental Liaison Services (headquartered in Geneva and New York) initiated outreach and coordination with Non Governmental Organizations on a multitude of issues. Coordinating UN activities with those of partner NGOs furthered the legitimation process of NGOs and INGOs in international affairs.

In the 1970s, individual Northern governments also took actions that seemed to confirm that NGOs were viewed as credible partners in both relief agency and development work. In 1973, for example, USAID altered its funding to provide multi-three year contracts for NGOs in developing countries. This new multi-year contracting helped to provide financial security and stability for the work NGOs undertook. It also signaled that NGOs were credible partners and would have staying power.

While the United Nations was convening legitimacy on international NGOs through its consultation and coordination efforts, international NGOs began to take steps on their own to create activities outside of state agencies and outside of and multi-state institutions. For example,

Amnesty International was founded in 1961 in the United Kingdom. During the 1970s, Amnesty International expanded internationally and exponentially, creating non governmental organizations in many states around the world. Likewise, Médecins sans Frontières (Doctors without Borders), was founded in 1971 and the Non Governmental Organization, Human Rights Watch, which was founded as Helsinki Watch in 1978 following the 1973-75 Helsinki Conference, expanded into new countries. These new International Non Governmental Organizations evolved to allow the participation of nationals from various countries.

In Africa, as noted above, during the 1970s, NGOs proliferated with the help of newfound legitimacy and newfound revenue sources. Also during the 1970s, African state capacity diminished as the oil shocks of 1973 and later 1979 skewered national budgets and undermined African exports. African states were caught in what economists have described as a “scissors effect.” Precisely at a time when energy costs were high and caused the prices of goods made in industrial countries to rise, African states earned less foreign exchange to pay for their increasingly expensive imports. This was because the high cost of energy raised the price of goods produced internationally and thus sales slowed as consumers saw their discretionary incomes dwindle and Northern businesses searched for ways to cut budgets including salaries and work positions. Fewer purchases were made and this left inventories on the shelves of producers in the advanced industrial countries which, in turn, undercut the demand for African exports of raw materials to be used in producing goods in the Northern states.

Without earning export taxes and with a poorly functioning domestic tax on its citizens who were facing the ripple effects of a sluggish global economy manipulated by the Arab Oil Exporting States, African states had to borrow to cover energy costs and payroll costs, and to offer state services. African debt mounted.

Other contributing factors to African debt no doubt included expanding military budgets, ever expanding bureaucracies, and the need to import food during repeated droughts throughout the 1980s.

While African state mismanagement and corruption undoubtedly took a toll on African economies, international events such as the oil shocks at the beginning and end of the 1970s also took their toll. Additionally, little new investment was initiated during this period as few business entrepreneurs could function in what U.S. President James Carter termed an international “economic malaise.” African states themselves could not revive their economies as they lacked the technology, work force skills, and market openings to find areas in which to compete in a shrinking international political economy.

As the African state became more obviously incapable of leading development, even international financial organizations began including NGOs in their programs. Between 1975 and 1982, six hundred and fifty private voluntary organizations/non governmental organizations were involved in 100 Bank-financed projects. (Smith 1990)

D. The 1980s: NGOs Filling the Gaps, the Creation of Umbrella NGOs, NGO-State Rivalries, and the Integration of African NGO Chapters Internationally

By the 1980s, the African state was viewed skeptically by external donors, Western diplomats, and African citizens across the continent. For foreigners who spoke of aid fatigue and the need to not support inefficient and often corrupt African leaders, abandoning African citizens, when there was such clear need among historically disadvantaged communities, was not an option. Thus, African non governmental organizations provided an alternative to supporting inefficient and/or corrupt African state leaders and their single-party, non-diversified economies.

There was an irony to this approach. On the one hand, donors were fatigued with “project development” approaches to national development and endorsed IMF national structural adjustment programs. On the other hand, donors began shifting funds from state agencies to NGO project initiatives.

This occurred in part because, along with foreign donors’ desires to fund alternative development programs outside of state programs, in the

1980s, non governmental organizations around the world advanced claims that their organizations carried the seeds of democracy and better represented average African citizens than did African state elites who occupied formal state administrative offices. We will return to these claims in Section II.

The 1980s saw the rise of intermediary NGOs or umbrella NGOs across Africa; these intermediary organizations grew out of three primary factors. First, beginning in the 1980s, African NGOs realized that they could find sources of financial support from external governments and donors, but that they suffered from an inability to claim these resources as different sources of donor funding required different forms to be filed in application for funding, and also required different record keeping mechanisms if funding was forthcoming. Also, during this time, African NGOs were hard pressed to employ many staffers and thus had little time and limited skills to devote to preparing the paperwork necessary when seeking funds. Further, because international donors came from many countries, funding applications had to be prepared in many foreign languages.

Intermediary or umbrella NGOs arose partly in response to this need for some person or agency to negotiate between local NGOs and foreign donors and mediate the range of rules operating in a given African country. In this instance, umbrella NGOs assisted smaller local NGOs when approaching foreign funders. Moreover, when a foreign funder sought a partner in an African state, they could receive assistance in partnering from an umbrella NGO.

A second contributing factor for the rise of intermediary or umbrella NGOs came from the needs of local NGOs to compare notes on project initiatives in various arenas in which they operated. Such a need was also acknowledged internationally. In 1986, for example, the UN Programme of Action for African Economic Recovery and Development (UNPAAERD) was adopted at an UNGA Special Session. It urged expanded cooperation among United Nations agencies with Northern NGOs and with African NGOs.

Finally, intermediary or umbrella NGOs arose to coordinate local NGO activities vis à vis the

NGO-AFRICAN STATE RELATIONS

African state. As revenue streams from foreign donors to African NGOs increased, states became increasingly interested in how to regulate their NGOs and recapture some of those revenue streams. NGOs needed to band together to represent their interests to the state. Umbrella organizations in some African states were able to assist with this task.

This same need to band together took place where local African NGOs that were not externally funded hoped that collective action would advance the interests of those working in a given sector. This can be seen when market stall owners or other occupationally clustered citizens formed professional associations through which to negotiate with an African state. Or it can be seen, for example, when makers of crafts tried to set licensing and quality guidelines for those who produced objects for purchase by tourists or for their national elites. These self monitoring, self regulating associations also functioned to represent their members' interests to the outside world.

In some African states, umbrella organizations took the organizational form of federated organizations and networking associations, such as the enduring religious brotherhoods in West Africa.

Several phenomena in the mid 1980s through the early 1990s complicated these processes. First, the externally negotiated Structural Adjustment Programs (SAPs) caused Northern donors to seek out local NGOs with whom they could partner in the absence of a fully staffed state agency or a state that lacked administrative capacity. With SAPs came obligations to cut national budgets which translated into cuts in social service spending as well as the dismissal of thousands of state bureaucrats who performed services for their African citizenry.

During this period of SAP budget cutting and state withdrawal from citizen's affairs, NGOs were left the task of trying to "fill in the gaps" for African citizens while the state tried to salvage itself from bankruptcy. This tracks with one view of the "social origins" of the growth of NGOs in the North that holds that where states are less involved in providing social safety nets and spending on citizen activities, NGOs will fill in the gaps. (Anheier and Salamon 1999) In Africa



FORGE, an international NGO working with African refugees in Zambia

in the 1980s, where African states lacked capacity and resources, external financing and the role of NGOs shifted. In 1982, external non governmental organizations transferred to Africa about \$0.8 billion dollars. By 1989 they were transferring 1.4 billion dollars to Africa, equal to more than half of all private financial flows to Africa in that same year. (Africa Recovery Sept. 1991)

As African NGOs continued to secure outside funding, the NGOs were increasingly seen as an employment alternative to the state by urban Africans seeking white collar employment. No longer was the African state seen as the sole or primary route to financial employment and success.

A proliferation of African NGOs began in the 1980s. This proliferation included the creation of some NGOs by unscrupulous founders who promised donors more than they delivered and used their NGO leader status as a vehicle for self enrichment and access to foreign exchange, rather than as a vehicle by which to provide Africans with services that the state could no longer provide. However, most NGOs were viewed as legitimate partners by their Northern counterparts. For example, the World Bank, which had focused on NGOs' involvement in its programs since the mid 1970s, in 1983 established a joint committee of NGOs/PVOs.

During the 1980s, those communities living under apartheid states also offered persuasive reasons for funneling money to lo-

cal NGOs rather than through state institutions. Historically disadvantaged communities in Namibia and South Africa received funding for NGO activities as few Northern donors wanted to be associated with, or were prevented legally from funding, apartheid racist states.

The second phenomenon that occurred for a substantial number, though certainly not the majority, of NGOs during the 1980s is the collapse of the distinction between some Northern NGOs and their African partners. During this period, a number of Northern NGOs created Southern chapters rather than attempting to coordinate with independent African NGOs. Amnesty International is an example of an international organization creating African chapters which have the same voting rights at international meetings as any other chapter and have the same limitations and/or range of independence to undertake domestic action. Or using another model, Oxfam creates local Oxfam projects run by and for local African communities. From the point of view of such foreign NGOs, this allowed decisions and money to be employed by locals and cut the costs of funding Northern experts who traveled to Africa. It also created a situation in which local citizens would make decisions in their community that they determined were best for them.

E. The Implosion of the Soviet Union and the Privileging of Civil Society; The 1990s and the Building South-South Linkages among African Non Governmental Organizations.

A third phenomenon that had an enormous impact on African state-NGO relations during the last years of the 1980s and throughout the 1990s was the implosion of the Soviet Union. Two observations followed from the demise of the Soviet Union. First, the United States and its Western Allies no longer needed to tolerate authoritarian governments simply because they were anti-Soviet states. Second, Civil Society actors and popular protests were major contributing forces to the democratic transitions in Eastern Europe and Latin America. Together these two observa-

tions led many policy makers in Northern states to believe that financial and political support to civil society organizations in African states would help in the political democratization and economic liberalization movements on that continent.

Democratizing and liberalizing states around the world became a concern of U.S. policymakers and those from other Northern states because of their belief in two principles: 1) that democratic states rarely go to war with one another, and 2) that free market capitalism provides the best mechanism for advancing economic development within a given state and among states. In the 1990s, during his second term in office, U.S. President Bill Clinton would make these two principles the pillars of the Clinton foreign policy doctrine, commonly referred to as “engagement and enlargement.” The efforts of U.S. foreign policy makers under Clinton were to engage non market states and assist them to liberalize their economies which, in turn, it was argued, would socialize the elites of these transitioning states into the community of nations and move them on the road to joining, and thereby enlarging, the community of democratic nations globally.

Additionally, during this period following the implosion of the Soviet Union which carries into the 1990s, efforts to build mutually supportive linkages among Southern states were increased. These initiatives were promoted for two major reasons. One, as noted above, if the goal of Northern states was to expand free trade areas and liberalize economies within African states, it was more efficient to accomplish this through regional free trade pacts and the harmonization of liberalization programs in adjacent states than to try to work with each state individually. South-South cooperation, which was seen in the late 1970s and early 1980s as a vehicle for resisting Northern hegemony, was now employed by the North as a means by which to regionally transform Southern states in ways that Northern states believed would create benefits for both the North and the South. Aid programs were also affected. In the 1990s, for example, Canadian Aid was given preferentially to those non governmental organizations that were collaborating with other non governmental organizations

across state lines and throughout their regions.

From the point of view of African states, with the implosion of the Soviet Union, there was no longer a credible alternative model of economic development to capitalism. If a state resisted moves to join the community of capitalist trading nations and their neighbors did not and then attracted foreign investment, then the state that had resisted would be left behind. Most African states continued to require foreign investment due to the low prices they received for their unrefined and agricultural exports. They had little to invest themselves in their own development. Efforts to liberalize African states were not matched by efforts to liberalize Northern states in the areas of agricultural or mineral trading. Given their trade profile, most African states lacked the ability to finance their own development investments. Capital mainly had to come from outside.

As the growing private sector in African states sought foreign investors, foreign donors did not entirely trust funneling money to the African state which was still in the process of creating transparent practices and a rule of law that treated all citizens as equals and did not lose efficiency through corruption and other market distorting activities. The arguments advanced by African and other NGOs in developing regions persuaded many foreign donors that service delivery was accomplished better, or at least as well, by neighborhood and localized NGOs as it was by governments. Moreover, having witnessed the power and democratization efforts of civil societies in toppling authoritarian regimes around the world, building strong civil society institutions such as local non governmental organizations was viewed as a bulwark against a return to authoritarian states. Such efforts had been proceeding since the 1980s when high conditionality structural adjustment programs were being introduced in Africa. In the 1990s, donors would continue to expand their efforts. Now, their actions to bypass states and build civil society institutions such as non governmental organizations were supported by an explosion of research on the links between civil society and democratization.

Resurrecting Alexis De Toqueville and his

writing on the role that civil voluntary associations in the United States played in creating habits of discussion, compromise, and civic trust, modern researchers examined his hypotheses and sought to analyze his findings in light of current events. Robert Putnam et al, for example, completed a monumental study of the roots of Italian democratic and fascist traditions. Putnam and his co-authors found that in Northern Italy, where civil institutions such as guilds existed, these civic organizations socialized citizens to learn the processes of negotiation, bargaining, compromise, and trust over time, and consequently democracy flourished and was defended when threatened. In Southern Italy where hierarchical authoritarian practices of agriculture persisted, fascism was attractive to the local citizenry.

Putnam's later research on the United States concerning its social turn toward individual activities and accomplishments further influenced policy makers in their notions of civil society and its link to democracy. Putnam analyzed the impact of computers and an emphasis on private sporting achievements as opposed to young people joining teams and engaging in voluntary community activities. He raised concerns about the habits of democracy among younger generations of Americans. But the underlying point was that engagement in civic organizations builds trust and the ability to converse and compromise and move on to new problem solving endeavors. Even as Putnam worried about the endurance of these activities in the United States and argued that they form the bases for thriving democracies, policy makers were utilizing his research to commit themselves to building civil society activities in late industrializing states.

F. The Twenty-First Century and African NGOs

As the twenty-first century dawned, optimism for multi-lateral cooperation and NGO-State relations continued. There was a new emphasis among donors on not only service delivery but also on governance and transparency and "nation building." Following in the intellectual trends of Putnam and other writers, Northern states, especially states of the European Union as well as the United States,

believed that by supporting local civic organizations and Non Governmental Organizational forums, democratic processes could be rooted in areas where formerly single party states reigned.

But African states had become suspicious of NGOs even as many NGOs believed that associating with government officials somehow tainted them.

II. Adversarial Concerns of NGO and State Leaders That Undercut Effective Policy Collaboration to the Detriment of African Citizens

As African NGOs continue to receive external dollars and as newly democratizing African states argue that they need revenues to effectively govern, hostility between these institutions is unsurprising. In the twenty-first century each institution has been making its case for receiving foreign donor dollars and for taking responsibility for service delivery in various sectors of a country's political economy. Below, I itemize major arguments made by NGO leaders as to why they should receive external and internal funding and be allowed by the state to administer services in various sectors.

A. African NGO Leaders Argue that They Should Receive Foreign Funding Largely for Reasons of Effectiveness and Democratic Practices.

African NGOs generally site the following reasons when making their case as recipients of foreign funds:

- ▶ Democracy is not developed from the top down; NGOs bring grassroots perspectives-effectively involving populations in the decision-making process
- ▶ NGOs provide important feedback information for proposed policy initiatives- producing better policies
- ▶ NGOs achieve more effective outreach into communities
- ▶ NGOs achieve more efficient use of funds
- ▶ NGOs create lasting democratic traditions/empowerment
- ▶ NGOs can make governments look good/better-enhance legitimacy

According to these claims, NGOs bring a community-based approach to decision making that allows for better policy planning as well as feedback loops to modify programs when necessary. NGOs lack the bureaucracy of the state and use funds more efficiently as they are flexible and more dollars go to projects, not administration. Many NGOs claim to be more democratic than states in that they respond to the stated needs of their local constituencies.

B. African States Argue that NGOs Overstate their Abilities and Undermine the Development of State Capacity on a Continent where Building State Capacity Should be a Priority.

African states generally cite the following reasons when making their case as recipients of forgoing funding:

- ▶ Governments need to build state capacity to gain legitimacy
- ▶ Scarce resource competition
- ▶ NGOs not democratic, who elected you? –consultation does not mean decision powers
- ▶ NGO finances not always/necessarily transparent
- ▶ Competing NGO perspectives – competing perspectives in civil society; it is up to government to balance and decide
- ▶ NGOs have limited ability to coordinate across sectors and across geographical boundaries-localized projects will not spur national development
- ▶ NGOs, like all citizen organizations, must be accountable to the state

Governments note that NGO claims to be democratic are often unsubstantiated. No one elected NGOs to lead them. Often, NGO Directors are local tyrants, not democrats. NGOs are not always transparent. Sometimes NGOs are taking funds that should go to the public and harboring those funds in overseas bank accounts owned by NGO directors. Other NGOs, “briefcase NGOs” as they are called, appear in order to claim resources but don't always deliver the promised product.

Additionally, Government officials will often claim that NGOs are special-

ized and have little capacity to coordinate across sectors in ways that will effectively address complex social problems and projects.

Finally, NGOs do not always agree with one another and thus, ultimately, it is government that must sort out the lines of responsibility and authority in various sectors for NGOs.

In the twenty-first century we have seen a rise of state activities in democratically transitioning states (some transitioning very slowly) that seek to “manage” their NGOs through registration, regulation, and intimidation.

III. State Leaders Must Recognize that Not All NGO Leaders Are the Same and That State Leaders Must Collaborate with Honest, Productive NGOs Because Such Collaboration Will Aid the State

State leaders particularly fear NGO leaders who are anti-state or allied with opposition parties. This is unsurprising especially among authoritarian state leaders. However, not all NGOs are active in the political realm.

It is the contention of this paper that all state leaders can benefit from NGO activities if they ally and coordinate with service delivery NGOs.

For all the reasons noted above in this paper, foreign donors are likely to continue to finance service delivery NGOs. NGO leaders want to conduct their work without harassment. State leaders want legitimacy and the wherewithal to service their citizens.

A win-win situation for both NGOs and State officials exists when an NGO is funded (usually externally) and can work with state counterparts to promote local communities. This requires that 1) NGOs are free to conduct their business and 2) that State officials be given credit along with the NGO staff for serving a community's needs. The critical key to this occurring successfully is the effective use of publicity. Citizens want services. If state-NGO collaboration is what it takes to deliver their services they will respond affirmatively to such collaboration.

For states to achieve and maintain legitimacy, it is in their interests to meet as many of their citi-

zens' needs as is possible. Collaborating with NGOs is a win-win situation for states as well as for NGOs who seek the opportunity to provide services.

A concerted effort at publicity and communication of successful collaboration will secure for the state much credit for NGO activity. The “trust-building activities” of collaboration and the publication of the achievement of common goals through local programs will enable the state to learn to trust particular NGOs with whom it collaborates.

NGOs can coordinate with the state and operate freely. This collaboration helps to improve local African communities and benefits both states and NGOs. When it is realized that such cooperation is possible, then overzealous regulatory state activities towards NGOs can be relaxed.

Sadly, few African states and NGOs collaborate well or use the communication resources at their disposal to advertise trust building collaborative activities that have positive results. A policy prescription for the twenty-first century, then, is that such collaboration and publicity should become priorities for state officials in sectors where effective NGOs operate.

IV. The Challenge of the Next Decade is for NGO International Partners, African state leaders, and Politically Active NGOs to Formulate Rules of Engagement that Benefit African Populations.

A particularly thorny, yet rarely acknowledged problem when foreign donors support NGOs is that donors hope that NGOs affect the political context of a given state, and not merely provide service delivery activities to a local citizenry. The European Union, the United States, and other Northern donors are quite explicit in their belief that civil society is expected to democratize a state from the bottom up and that such NGOs are to safeguard human rights and the rule of law.

In African states, democracy is once again being challenged as ruling political parties find ways to maintain their power while claiming to be democratic. The idea of civil society democratizing the state and guarding the underpinnings of political democracy is not attractive to

state leaders who seek ways to manage and contain political opposition so the current rulers can continue to rule. To such state leaders, NGOs are seen as untrustworthy, anti-state activists.

Northern donors have not yet sufficiently articulated how their support for political NGOs should not be viewed by African states as intervention in the political affairs of African states.

As the evolution of the NGO-African state relations continues, this arena of political activity by NGOs in transitioning African states will be of critical importance. It would be quite possible for African governments to begin to identify and collaborate with service delivery NGOs and continue to ignore or intimidate political or civic NGOs.

In advanced industrial democratic states, political NGOs that are allied with opposition forces to the current government are protected by the rule of law that guarantees such NGOs treatment equal to NGOs that are partisan toward the government. When administrations and political parties replace each other through elections, all NGOs remain protected as long as their opposition and discourse remains lawful.

In the first decade of the twenty-first century, most African state leaders are unwilling to embrace such democratic practices. Working out state-NGO interactions in the political realm remains the critical task of evolving African NGO-state relations.

Likewise, international donors must be explicit, principled, and candid regarding their roles as third party actors in such evolving NGO-African state formations. This is the task for the next decade of the twenty-first century.

Notes

Africa Recovery, Sept. 1991, Jenkins, Karen. The Christna Church as an NGO in Africa: "Supporting Post-Independence Era State Legitimacy or Promoting Change?" in Eve Sandberg, *The Changing Politics of Non-Governmental Organizations and African States Westport: Praeger Publishers, 1994, The Nonprofit Sector (1999).*

Salamon, Lester Helmut K. Anheier Et Al., *Global Civil Society: Dimensions*

Smith, Brian. *More Than Altruism The Politics of Private Foreign Aid Princeton: Princeton University Press. 1990.*

Strategic Research Inc. *Workbook 1. NGO-State Relations (2004).*

Tripp, Aili Mari. "The Impact of Crisis and Economic Reform on Tanzania's Changing Associational Life" in Eve Sandberg, *The Changing Politics of Non-Governmental Organizations and African States Westport: Praeger Publishers, 1994.*

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STRENGTHENING THE NIGERIAN DEMOCRATIC INSTITUTIONS THROUGH THE AFRICAN UNION: AGENDA FOR STABILITY AND DEVELOPMENT IN AFRICA

KWAME FRIMPONG

1. Introduction

Over the years, Africa's role within the international arena has constantly been negative. Historically, as a result of many factors, Africa did not have the opportunity to assert itself. Post independence has equally not benefited the continent in any meaningful way. The general perception is to dismiss the continent as a lost case. Different groups, organizations and individuals have adopted different approaches in trying to address the seemingly intractable problems of the continent, and yet still we do not seem to be making any progress.

We cannot run away from the fact that undemocratic governments have largely contributed to the many conflicts bedeviling many countries and regions on the African continent, with the ripple effects reaching far and beyond the borders of the affected countries and the regions in question. Of late, it has become fashionable to focus solely on democracy and good governance as the panacea for solving Africa's perennial problems. While democracy *per se* can contribute to the solution, this paper argues that we need more than mere cosmetic democracy to deal with the problems on the continent. It requires a concerted effort on behalf of all member states and all the peoples of the continent to come to a new realisation that Africa has come of age, and is ready to free itself from all the negative factors. This is the concept of the African Renaissance.

In this paper, the author challenges the status quo and argues for the intervention of the African Union through the compulsory and firm application of the African Peer Review Mechanism (APRM) and the New Partnership for Africa's Development (NEPAD). This is to ensure

that all participating countries on the continent adhere strictly to the mandates of the Constitution of the African Union, the African Peer Review Mechanism (APRM) and the New Partnership for Africa's Development (NEPAD).

The author holds the view that the choice of voluntariness by member states in the application of the APRM does not help in addressing the core cause of the problem facing the continent. It is not saying that whatever takes place in one country ultimately has repercussions to others on the continent. Under those circumstances, it is no longer an internal problem for any country to try to hide behind the concept of "internal affairs."

2. Africa We Knew – The Glorious Past

The fact that Africa has, over the centuries, been plagued by different kinds of problems cannot be disputed. Among the difficult experiences are the slave trade, colonialism, post-independence dictatorial rule, armed and ethnic conflicts, and mismanagement of the economy and natural resources. In the same way, the fact that Africa has had proud historical past is also not in dispute. Some writers such as Wilks (1970), Boahen (1986), and Ayittey (1991) have documented the various great kingdoms of the past, some of them generating into empires. Among these are the Asante, Dahomey, Kongo, Sokoto, and Zulu, just to name a few. Our concern therefore is that, in our search for solutions to our endemic problems, we should not glorify our past, but rather look for the most basic and useful policies and practices that can be identified from our historical past and utilised for the benefit of the peoples of this wonderful continent. We cannot and should not attempt to go

back to the past solely for sentimental considerations, since practically that is not only impossible, but also for such an exercise will have no real benefit for the people on the continent. It is in this context that we should focus our attention on our search for a new direction in solving our problems.

One issue that is deeply rooted in the traditions of all African countries is the kinship system. As Ayittey (supra.) points out, in Africa, unlike the West, “many studies have shown that kinship is the articulating principle of social organization as a whole, and the basis of social integration.” Bell (1987) supports this view:

Kinship relations were the main relations of production. They were also the juro-political and ritual relations. In addition, they governed the way in which societies organized and used the resources of the environment, notably the land, and spatial interaction between members (in Ayittey, ibid.).

Flowing from the kinship system is the communal nature of the African peoples, the concern for one another. The practical nature of this was found in our land tenure system. This was expressed in the case of *Tijani v. Secretary of Southern Nigeria*:

The next fact, which it is important to bear in mind in order to understand the native law is that the notion of individual ownership, is foreign to native ideas. Land belongs to the community, the village or the family, never to the individual (1921).

The *mafisa* system that is practised in the southern African region is one of those practices, customs or traditions in Africa that identifies with the needs of the less fortunate members of the community. Colonial and imperial rule, however, destroyed most of the customs, traditions and practices. There is no doubt that a strong correlation exists between landlessness and poverty on the continent. With colonial rule came the plantation system and the exploitation of the peoples of the continent. Land grabbing by a few privileged individuals is now the order of the day in nearly all the African countries.

All of these new developments are inconsistent with the Africa we knew, which prided itself on its commitment to communal system of

kinship relationship. Any lasting solution to African problems should be rooted in policies that are human centred and that seek to address the needs of the peoples of the continent. Most of the post-independent policies have been focused on the selfish interest of the few elitists in power. This travesty of justice should be reversed.

3. Nature of African Governments

Colonial rule did not develop or nurture democracy for the African continent. Post independence has not developed viable democratic institutions. While we concede that democracy is a western institution, it cannot be disputed that the goals are appropriate for the citizenry and are therefore of universal application. Any politician or academic who claims that there is something known as African brand of democracy does not persuade me. More often than not, those who make such assertions are merely trying to hide behind dictatorial rule (Frimpong, 1999a). Democracy in different environments may have some variations in terms of practical application, but cannot fail to focus on the interest of the citizens it seeks to govern and protect.

With the possible exception of a few countries, most African governments since independence have been characterised by:

- **Lack of genuine democratic rule**

The continent has witnessed so many instances of one party rule, either de jure or de facto, military dictatorship, pseudo-democratic rule, a claim of divine right to rule—where leaders stay in power indefinitely, and the domination of the elite in the government

- **Absence of free and fair elections**

There are serious misconceptions regarding what constitutes as free and fair elections, which yields an urgent need to define what constitutes as free and fair elections. The current state of affairs does not augue well for the development of democracy on the continent.

What do we see as a common pattern on the African continent? A military person comes to power. He controls everything, the guns, and the media, determines who is in charge of the body

he establishes to conduct elections, the police, the judiciary, etc., and later turns around to organise elections on his own terms. He subsequently claims to have won the elections and therefore allegedly transforms himself as a democratic leader. This is not only hypocrisy and a mockery of democracy, but is also both an insult to and a betrayal of the whole concept of democracy. Those, especially from the international community, who declare such elections as free and fair, must re-assess their role in the declaration of election results. One need not be a political scientist to see the fallacy of such free and fair elections.

The danger rests on the notion that free and fair elections take place only during the day(s) of voting. However, that is erroneous. As Frimpong (1998, 1999a), has argued, elections are a process, culminating in the voting, which takes place at a later stage. All the stages must have elements of free and fairness. The determination of free and fair elections based on the voting day is itself unfair and entrenches dictatorial rule in Africa.

• **Politics of Political Vindictiveness**

Those who do not support the ruling party are seen as the enemies of the government and are hunted and destroyed like vermin. Viable opposition is therefore an exception rather than a rule. It is important for African leaders to recognise the important role played by the opposition. The opposition should not be seen as an enemy to the ruling party, but is there to assist and ensure that the government is accountable and lives up to its promises to the people.

• **Absence of Judicial Independence**

In many African countries, the judiciary virtually becomes part of, or an arm of the executive. Their Independence is therefore compromised. However, one needs a predictable legal environment for true democracy and the defence of fundamental rights to function and flourish.

• **Absence of Rule of Law**

Governments act with absolute impunity and lack of respect for the rule of law. They do so simply because they see themselves as not accountable to

anyone. The normal checks and balances advocated by earlier proponents of the democratic institutions do not exist. The governments are both the executive and the judiciary. However, the operation of the rule of law is essential to both the government and governed. "The rule of law is...an essential factor for the effective functioning of the society and the economy" (OECD, 1995). "If the rule of law is respected in a country the popular notion of separation of powers is put into practice" (Frimpong, 1998). This in turn provides the nation with "a predictable legal environment, with an objective, reliable and independent judiciary" (OECD *ibid.*).

• **Weak Media**

At the Southern African Universities Social Science Conference (SAUSSC) meeting in Lusaka in 1997, we came out with this resolution concerning the media in Africa:

The media in Africa is controlled either directly or indirectly by the state and therefore lacks the necessary freedom and independence to discharge its responsibility for the development of and sustenance of democratic governance (Frimpong & Jacques, 1999).

There has been the tendency for African governments to overreact to the publication of any news that they consider unpleasant. The media in the process becomes the enemy of the government. The need for the media to be independent and operate in absolute freedom is an essential element for any true democracy. Press freedom, however, should be exercised sensibly and objectively. It does not call for sensationalism and unwarranted attacks on the personal lives of individuals. It calls for maturity in assessing what is newsworthy. However, the government should not be the arbiter of what is publishable or not. That will amount to censorship, which should not be entertained, as it is inimical to the practice of democracy. The courts, if prepared to exercise their true function in society, should handle that. The yardstick should be the interest of the nation. A newspaper should put political, personal interests and other considerations aside in determining what to publish.

The practice of governments rushing

members of the media before the courts with lawsuits and prosecutions is, however, not the answer. Just as the presence of the opposition is good for the development and practice of democracy, the media plays a vital role in the nurturing of democracy. It is not surprising that it is now referred to as the fourth arm of the government.

• Contribution of the Educated Elite

I hold the view that there have been many instances where the intellectual community has failed the African continent by aligning themselves with dictatorial regimes. The Southern African Universities Social Science Conference (SAUSSC) at its meeting in Lusaka in 1997 turned its attention to this very issue. It adopted a Resolution, which strongly condemned this practice:

The intellectual community in Africa has not sufficiently addressed itself to the social, economic and political problems on the continent through appropriate research and dissemination of scientifically informed conclusions and recommendations and has on a number of occasions compromised its role in society by identifying itself for selfish interest with the undemocratic governments (Frimpong and Jacques, supra).

More often than not, the dictators on the continent have thrived with the connivance of the educated elite. The members of the legal profession who are expected to defend the defenceless are the ones who draft their constitutions and proclamations for them. We find a number of Professors leaving the universities to work under military dictators.

• Contribution of the International Community

The international community is noted for double standards when it comes to the defence of democracy on the continent. It is not clear whether they are truly supporting democracy or not. While Abacha was challenged, Mugabe has searched others in similar situations who were or are allowed to remain in power. The most glaring example is Museveni in Uganda. It seems their support or criticism depends on their own economic and social interests. Mobutu of former Zaire offers a classic example. His dictatorial and corrupt practices destroyed his

country. This was known throughout the world, nevertheless the West continued to support him in power. In general, the international community has been known to prop-up dictatorial governments in Africa. However, if the leader falls foul to the policies of the Western governments, then such a leader is constantly attacked. The barrage of criticisms against Mugabe of Zimbabwe is another example of the double standards employed by the West. There are many such dictators on the continent who have been in power for about the same period as Mugabe, they are not only tolerated, but also pampered with red carpets and state visits.

The double standards by the international community tend to send the wrong message to the countries involved. The dictators are encouraged to tighten their grip on power. It can also have serious consequences for democratic movements in the affected countries. In some of the countries, the world has been inundated with the so-called success stories of the regimes (Frimpong, 1997a) and this has meant that the opposition is seen as the opponents of this so-called success story. They become the bad guys. In the process, viable opposition, which can nurture true democracy, is destroyed.

4. Consequences: The State of African Politics and Development

- I. General Mal-administration
- II. Absence of Good Governance
- III. Economic Mismanagement
- IV. No Accountability
- V. Corruption
- VI. Mass Unemployment
- V. Social Services not provided or neglected: education, health services, water, electricity, and housing
- VI. Majority of the population living in abject poverty
- VII. General Instability: At Internal and Regional Levels – Sierra Leone, Liberia, Zaire, Sudan (Darfur Region), Uganda, Burundi, Rwanda, etc.
- VIII. Refugee problems at a large scale - Africa is estimated to have the largest number of refugees in the whole world (Ayittey, supra)

Ayittey sums it up in what he describes as Africa's Deepening Crisis:

The 1980s have been described as a "Lost Decade" for Africa. Once a region with rich natural resources as well as bountiful stores of optimism and hope, the African continent now teeters perilously on the brink of economic disintegration, political chaos, and institutional and social decay. The continent's unrelentless slide into economic doldrums is now common knowledge.

While we may concede that others have contributed to the African crisis, especially through the debt burden, the substantial cause is the result of unconstitutional governments, dictatorial rule, corruption and general mismanagement by Africans themselves. Our leaders have been practising the politics of catapulting themselves into power through the barrel of the gun, or entrenching themselves in power for as long as they choose. We witnessed this though Mobutu in Zaire, Rawlings in Ghana, Siad Baare in Somalia, Museveni in Uganda, etc.

Furthermore, the problem can be seen in the types of economics that the East Africans call "wabenzi" - "men of Mercedes Benz" or what the Nigerians term "bazongas" (raiders of the public treasury) (Ayittey, *ibid.*). The practice of looting money from the coffers of the nation and stacking them in foreign accounts in Switzerland, New York, London and other Western capitals has bred the continent to a state of total bankruptcy. The revelation that Abacha of Nigeria stole nearly \$1 billion from the nation's coffers is just the tip of the iceberg of what other leaders have done or are still doing.

It is this state of affairs that we must seek to reverse. What role can the African Union play in this? What about the concept of African Renaissance?

An important aspect of the African Renaissance is the recognition that Africans must try to find solutions to their own problems. As Ayittey (*ibid.*) points out:

The solutions to the African crisis lie in Africa itself; in its own backyard, so to speak. They do not lie in the corridors of the World Bank or the IMF; nor in the inner sanctum

of the Soviet presidium. These solutions entail returning to Africa's own roots and building or improving upon them.

We suffer from what one may describe as an inferiority complex. We would prefer to seek foreign solution to our problems rather than rely on own expertise. Rarely do we feel comfortable with what we can do ourselves. In addition, in our reliance on foreign ideas we pay a very heavy price.

*"By 1989, the total number of expatriate consultants and experts employed by the World Bank alone to work to solve Africa's economic problems had reached a staggering 80,000, costing cash-strapped African governments between \$1 to \$4 billion annually in fees and compensation. This was probably a case of "too many cooks spoil the broth." Less than one-half of one percent of these management consultants were native Africans (Ayittey, *ibid.*).*

5. Resurrecting African Renaissance in the Quest for a Solution

African Renaissance is not a new concept. Many pioneers have advanced the idea several years ago. Among them were Africans as well as our brothers and sisters who had been separated from the main continent into other parts of the globe. It is unfortunate that most of them have left the scene. They include great names such as, Azikiwe, Blyden, Du Bois, Gavey, Nassar, Nkrumah, Nyerere, Padmore, Platjie, Sekou Toure, Tubman and Williams. The modern proponents of the idea are not trying to re-invent the wheel. The current breed of leaders supporting the idea, particularly, President Mbeki of South Africa, who is simply saying that we Africans have come of age and have recognised our failures, problems and difficulties. Let us sit down, take stock of our lives and try to pull ourselves together to tackle some of the problems that seem insoluble. According to President Mbeki (1999a),

What is new about it today is that the conditions exist for the process to be enhanced, throughout the continent, leading to the transformation of the idea from a dream dreamt by visionaries to practical programme of action for revolutionaries.

The need for a new approach to do-

ing things differently on the continent finds support in the introduction of the New Partnership for Africa's Development (NEPAD):

The new partnership for Africa's Development calls for the reversal of this abnormal situation by changing the relationship that underpins it. Africans are appealing neither for the further entrenchment of dependency through aid, nor for marginal concessions.

The desire to look for African solutions to the African problems should not be seen as a movement in the direction of isolationism. In this modern world of interdependence, this is not possible. It merely seeks to limit too much reliance on foreign ideas to solve African problems.

6. African Renaissance Within the Global Community

The pursuit of African Renaissance calls for the efforts of individual African countries and collective actions at regional, continental, as well as global co-operation. There is a lot that individual African countries can do for themselves. However, as the old saying goes, divided we fall, united we stand. Kwame Nkrumah, one of the great sons of Africa and a strong advocate for continental unity stated in the early days of Ghana's independence: "Ghana's independence is meaningless unless it is linked to the total liberation of the continent". Now the total liberation has been achieved with the destruction of apartheid, the last of the vestiges of colonialism and neo-colonialism. However, what has to be recognised is the reality that none of these African countries on its own can succeed in the realisation of the goals of the African Renaissance. Just as the political liberation of one African country is meaningless unless it is linked to the total liberation of the entire continent, the economic and social transformation of one country is meaningless unless the entire continent is also liberated. In other words, the destinies of the peoples of Africa are linked that "united they stand, divided they fall". As pointed out by President Mbeki:

Each one of our countries is constrained in its ability to

achieve peace, stability, sustained development and a better life for the people, except in the context of the accomplishment of these objectives in other sister African countries (1999a).

It should not be forgotten that most of the boundaries in Africa that we inherited were drawn artificially by the colonial masters and separated families and ethnic groups.

'We suffer from what one may describe as an inferiority complex. We would prefer to seek foreign solution to our problems rather than rely on own expertise.'

Africa therefore needs regional bodies such as the Economic Community of West Africa, (ECOWAS), the Southern African Development Community (SADC), and the East African Community (EAC). Regional organizations can play an important role in conflict resolutions and even in assisting other countries in the region in times of need. The recent flooding in the southern African region has demonstrated how countries in the region can come together to assist a member country that is in need. The recent uprising in Lesotho also brought about the intervention of Botswana and South Africa in order to restore peace. One would have thought that a similar effort would have been made much earlier in Angola in order to alleviate the suffering of the citizens of that country. The same could have been done in the Democratic Republic of Congo (DRC) instead of the involvement of individual countries for selfish interests.

It is in this context that we should focus our attention on the role that the African Union (AU) can play. In terms of economic emancipation, the AU can present a united position at global negotiations as at the WTO and environmental conferences. The AU should intensify its

efforts in resolving conflicts by peaceful means. There is no justification whatsoever for African countries to wage war against one another. We do not have the means to cater for the welfare of our peoples and it is irresponsible for us spend the little we have on useless wars. For instance, there is no justification for the border conflict between Ethiopia and Eritrea. It is imperative on us to seek a peaceful resolution of the conflict. The mere fact that we have not succeeded so far is not an excuse to refrain from further peace initiatives.

It is important to stress that we cannot achieve any form of unity whether at regional or continental levels if the peoples do not accept one another and are at each other's throats. All forms of xenophobia should be stopped particularly when politicians through irresponsible utterances fan them. Even if not initiated from politicians, people in authority owe a responsibility to issue statements, which condemn any form of xenophobic tendencies.

African governments should avoid the practice of blaming their economic woes on non-nationals. Expulsions of non-nationals as scapegoats for economic mismanagement of the affairs of a nation are misguided.

7. Why Democratic Solution

As we noted earlier, undemocratic systems of government have played a major role in nurturing and fomenting conflicts and instability in Africa. As the late President John F. Kennedy once observed, "those who make peaceful change through the ballot box impossible make violent change possible." Opting democracy is a way of minimising conflicts in Africa.

A democratic system of government ensures that the government in power is accountable to the people and to the laws of the nation. Ultimately, the people exercise the power to make and un-make a government. The notion of checks and balances, through the separation of powers, provides the backbone for transparency and accountability and therefore keeps the government in power under constant check. There must be a meaningful role played by the opposition as well

as the press. The net result is that there is a rule of law, transparency and accountability. It is imperative for democratic institutions to be in place if the public and private confidence in the economy is to be enhanced. Where the government exercises absolute power there is the tendency to abuse political and economic power, resulting in the absence of transparency and accountability.

The doctrine of the separation of powers, as proposed by the French philosopher, Montesquieu requires that a government is made up of the legislature, the executive and the judiciary. Within the legislature the opposition must be strong and to be able to put the ruling government on constant check. Botswana offers a good example of the practice of democratic system and still remains one of the few countries in Africa that can boast of the practice of democracy (Amoako, 2000). It has been noted: "Although Botswana was not the first African country to achieve independence, it has been one of the few that has sustained democratic politics during the last 40 years. It has demonstrated the fallacy of much international thinking that held that electoral democracy was only achievable in rich, western Europe and north America" (Maundeni, 2005). Since independence, presidential and parliamentary elections are held on regular basis. Thus, the opportunity exists for the change of government through the ballot.

• Good Governance

Democratic government provides the basis for good governance. The ultimate aim of any democratic government in power is to achieve an optimum level of development; and this can best be enhanced under a system of good governance. "Good governance is vital for economic development because it complements sound rules and economic policies" (Kahkone, Meagher, & van Bastelaer, 1997). Governance has been defined by the United Nations Development Programme as "the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. Governance comprises the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise

their legal rights and obligations” (UNDP, 1997). This is consistent with the World Bank definition “to denote the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development” (OECD, 1995). The legitimacy and transparent nature of the exercise of the governance will determine whether it is good or not.

Through the practice of good governance, the opposition is able to articulate its views, and the citizenry have the freedom to exercise the rights and opportunities necessary for participatory democracy. The transparent nature of the formulation and implementation of policies instil confidence in the population and remove any inhibition, which militates against participation in the development of the nation. Civil Society and the press operate freely without any inhibitions. The cumulative effect is that all of these impact positively on every aspect of the nation and the private sector confidence is equally enhanced.

• **The Rule of Law**

In a democratic system of government, the rule of law is very important for sustaining the democratic process. It is thus a major factor that has the potential to instil both public and private sector confidence in a country’s institutions. “The rule of law is.... an essential factor for the effective functioning of the society and the economy” (OECD, 1995). If the rule of law operates in a country, it creates “a predictable legal environment, with an objective, reliable and independent judiciary” (Ibid).

• **Transparency and Accountability**

Africa does not seem to have an enviable record when it comes to law enforcement. If one were to identify the most serious flaw in Africa’s post-independence era, any objective analyst should have no hesitation in identifying lack of accountability and indiscipline resulting from the non-implementation and non-enforcement of laws and decisions as the major cause. It is one thing to have laws on the statue books, and another to implement decisions and the laws. When the laws are there for the sake of being there, they become a scarecrow to the population. This has been the

trend in many countries since independence. The developmental failures on the continent can be attributed directly to this phenomenon. Tax invasions, non-payment of customs and exercise duties, corruption, fraudulent business transactions, lack of confidence in the security forces and the judiciary are all interlinked with the popular notion that there is a breakdown of law and order. The crucial question that arises is whether most of the African countries have the capacity to create a predictable legal environment in which investor confidence can be assured to enhance the public and private partnership relationship for the development of the countries. Any objective assessment of the situations reveals that the story is the same in most capitals around the continent.

As has been stressed earlier, the major hindrance to the private sector participation, particularly the foreign investor, in the development of some countries, is the security situation in most of the African countries. Furthermore, the breakdown of law and order and also the lack of public confidence in the whole machinery of administration of justice also militate against investor confidence. For instance, corruption which is seen as a major contributory factor to under-development in many third world countries (“corruption restricts investment and holds back economic growth” UNDP 1997 viii) thrives substantially in an environment where one can cheat and get away with it.

• **The Independence of the Judiciary and Predictable Legal Environment**

We need independent judiciary to ensure that the rule of law operates and enable the existence of an environment for a predictable legal system. If we consider the dictates of Article 10 of the Universal Declaration of Human Rights, then the independence of the judiciary is critical for the realisation of the objectives behind the Declaration:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

• **Minimisation of Corruption**

The true practice of democratic system of govern-

ment dictates transparency and accountability in all sectors of government. The existence of democratic institutions minimises the operation of corruption.

8. African Union and the Way Forward

With the coming into existence of the African Union in 2000, the continent has set itself on track to achieve democratic system of governance, peace, stability, economic growth and development throughout the African continent. These policies are fully entrenched in the Constitutive Act of the African Union (the AU Constitution) and the New Partnership for Africa's Development (NEPAD). In addition, three other instruments support the AU's democratic agenda. These are, (i) the declaration on the framework for the AU's response to unconstitutional changes of governments, (ii) the declaration governing democratic elections in Africa, and (iii) the declaration on observing and monitoring elections.

The Preamble to the AU Constitution, among other things states:

CONSCIOUS of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security and stability as a prerequisite for the implementation of our development and integration agenda;

DETERMINED to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law;

FURTHER DETERMINED to take all-necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates effectively;

Under Objectives in Article 3, we have the following:

- f. Promote peace, security, and stability on the continent;*
- g. Promote democratic principles and institutions, popular participation and good governance;*

There are similar provisions under the Principles in Article 4:

m. Respect for democratic principles, human rights, the rule of law and good governance;

a. Respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;

p. Condemnation and rejection of unconstitutional changes of government.

Furthermore, the fact that Africa has set for itself the goal for political and economic changes is evident in the New Partnership for Africa's Development. The introduction emphatically declares in paragraph 7:

Across the continent, Africans declare that we will no longer allow ourselves to be conditioned by circumstance. We will determine our own destiny and call on the rest of the world to complement our efforts. There are already signs of progress and hope. Democratic regimes that are committed to the protection of human rights, people centred development and market-oriented economics are on the increase. African peoples have begun to demonstrate their refusal to accept poor economic and political leadership. These developments are, however, uneven and inadequate and need to be further expedited.

• Strengthening Democratic Institutions

As previously argued, it is a verified truism that unconstitutional and undemocratic governments most often generate internal and regional conflicts and instability on the continent. They stifle opposition and undermine economic and social development. It is not gainsaying that the continent has witnessed many leaders who have come to power through the barrel of the gun or other illegitimate means and have reigned with excessive brutality, terrorising the citizens for whom they claim to be their liberators. Their stay in power has often generated internal conflict or has contributed to regional instability. We have all witnessed the senseless killings that took place in Liberia, the Sierra Leone, and Rwanda. It is equally true that the conflict and resultant wars that took place in the DRC has its genesis in undemocratic regime of the former Zaire. Mobutu, for over 30 years kept himself in power, in the process destroyed all democratic institutions, the political system, the economy,

and denied the existence any form of opposition.

It is therefore gratifying to note that the AU Constitution and the New Partnership for Africa's Development, through the African Peer Review Mechanism (APRM), have provisions for addressing this problem. In all these, the emphasis is on democratic governments, the practice of good governance, respect for human rights and the observance of the rule of law.

• **Desired Outputs**

Among other things, we want an Africa:

(a) that is free from unconstitutional, undemocratic governments and any form of dictatorial rule.

(b) in which participatory democracy is the practice,

(c) where the citizenry shall have the right to choose their leaders in free and fair elections.

(d) where the rule of law is respected

(e) in which the peoples of the continent enjoy freedom of association, freedom of speech and freedom of the media.

(f) where there will be peace and stability on the continent in which conflicts and wars will be the things of the past

(g) in which we shall create the right environment for development and prosperity for all the peoples of the continent.

In order to achieve these, we believe the AU, through appropriate institutions and mechanism should be empowered to enforce the adherence and observance of the relevant mandates. The relevant institutions we need to strengthen are discussed under suggestions.

9. Africa and the United Nations

In these days of globalization, we do not think that we can make any meaningful progress with-

out addressing some issues of international implications for the African continent. In particular, we need to address the current structure of the Security Council of the United Nations. It has been stressed that the current structure of the United Nations at the Security Council level is not in the best interest of Africa. African members at the Security Council are there on rotational basis and therefore do not exercise veto powers as the permanent members. This calls for the reform of the Security Council. We take note that the reform process is ongoing and hope that the views expressed here will be taken into account. I make the following suggestions for some radical reforms:

• **Permanent Seats**

The current practice of reserving permanent seats to specific countries should be abolished. Permanent seats, if they are to be retained, should be allocated on regional basis. The world can be grouped into the following regions: Africa, Eastern Asia, Western Asia, Europe, The Americas, comprising North and South America. Within those regions, a permanent seat should be allocated then allowing the seat to be rotated among the countries in the regions according to their own internal arrangements. This would avoid any situation of some countries becoming hegemony over others. The outcome of this proposal is that in Africa we shall not be saddled with a situation where one country dominates the rest. On this, I find support in the words of President Mbeki (1999a) at the launching of the African Renaissance Institute:

The continental offensive can only be sustained if the active populations of all countries are confident that none of the countries of the continent, regardless of the extent of its contribution to the Renaissance, seeks to impose itself on the rest as a new imperialist power.

Those words should apply to the international community as well. There should be the recognition of equality of all nations, big and small, rich and poor, powerful and weak, within the United Nations, as well as within the new Security Council that I am proposing.

• **Veto Power**

Ideally, we should strive to abolish the veto power within the Security Council. However, if veto power is retained it has to carry this limitation: The General assembly should have overriding power over the veto within the Security Council as is practised within the United States Congress. This will ensure that no one country imposes its will on the rest of the world.

Now that the UN Charter is under review, particularly regarding the representation on the Security council, I urge our African leaders, individually and acting collectively through the AU, to press for these reforms. The current proposal to simply enlarge the Security Council by giving seats to some selected countries does not only fail to go far enough, but is also reactionary and should be rejected as it seeks to retain the status quo of creating hegemony within the Security Council. The support of the Non-Aligned Movement should also be sought.

10. Enhancing Political and Economic Progress in Africa – Some Suggestions

From the AU Constitution and the NEPAD, there is a serious commitment to eradicate from the continent all forms of unconstitutional, undemocratic and dictatorial governments in order to achieve political, economic and social transformation. While we endorse the measures put in place to address the problem, the question we have to answer is whether or not the steps taken are capable of achieving the desired results. In this section, we examine those measures and make the relevant suggestions for achieving the intended objectives.

• **AU and Unconstitutional Governments**

As has been noted earlier, the AU in its Constitution, under both the Objectives and principles, has made it clear that unconstitutional systems of government are not welcome on the continent. Article 3(g) seeks to “promote democratic principles and institutions, popular participation and good governance. Article 4 also provides (m). “Respect for democratic principles, human rights rule, the rule of law and good governance.” More force-

fully, it rejects any form of unconstitutional government from Africa: Condemnation and rejection of unconstitutional changes of governments.

It is however, under the Declaration on the framework for an AU response to unconstitutional changes of government that defines common values and principles for democratic governance on the continent. Among other things, the Declaration seeks to achieve the following:

- i. Adoption of a democratic constitution. Such a constitution should follow procedures that conform to universally acceptable principles of democracy.
- ii. Separation of powers
- iii. Independence of the judiciary and all quasi-tribunals bodies.
- iv. Recognition of the role of the opposition
- v. Organization of free and regular elections
- vi. Guarantee of freedom of expression
- vii. Guarantee of freedom of press
- viii. Guarantee and promotion of fundamental human rights
- ix. Protection and Guarantee of democratic system of change of government.

Furthermore, the AU Constitution provides in Article 30, under suspension:

Governments, which shall come to power through unconstitutional means, shall not be allowed to participate in the activities of the Union.

This is a very welcome development. However, we believe that this particular sanction has a major flaw. When a government is suspended from the activities of the AU then the citizens of that country are the ones who suffer. The real culprits are therefore, left off the hook. Let us consider a practical situation. Let us assume that in Country “A”, “Soldier Ambition” stages a coup and overthrows the constitutionally elected government that the people have through free and fair elections elected into power. If the government led by Soldier Ambition is suspended, who is the victim here? Are we punishing the citizens of Country “A” for the sins of the soldier who has

committed a treasonable act against the country?

We need a new approach in terms of the appropriate sanction we should impose under such circumstances. We propose the following:

A. First, we must make sure that only those connected with the unconstitutional means of coming to power are the ones punished.

B. Second, we should make sure that they never benefit from their treasonable conduct. We should abolish the current practice of allowing those who came to power by unconstitutional means to remain as members of the AU. Article 30 of the AU Constitution should apply to them as well. It is both immoral and illogical for such leaders to participate in decisions on democracy and good governance to be binding on others. By giving recognition to such leaders, to the extent that they are role players in Africa and on the international scene, we are indirectly encouraging other future coup leaders that the end justifies the means. Furthermore, the AU loses credibility in the international community by allowing such leaders to be members of the Union. If any future adventurists resist the temptation of choosing to come to power by unconstitutional means then we have achieved our goal of promoting the change of government through the ballot box.

C. Third, any sanction that we impose on those individuals should have an element of deterrence against any other future aspirant to come to power by unconstitutional means.

D. Fourth, any form of unconstitutional change of government should be a treasonable offence recognised by member states of the AU and therefore should fall within the domestic jurisdictions of all member states.

Furthermore, as a way of strengthening our position on the issue, we recommend that we either adopt a declaration or amend the AU Constitution to include a provision that reads:

Any person who unlawfully and unconstitutionally over-

throws any constitutionally established government, or comes to power by any unconstitutional or unlawful means, commits a treasonable offence that is punishable among all member states during the lifetime of such a person.

We suggest that such a provision should be binding on all member states and incorporated into the constitutions or domestic laws of all member states. It must accordingly be enforced within all member states. This will make it unattractive for any such coup-mongers or military adventurists to find any place of refuge on the continent. We believe that if such a step is taken by the AU, it will gain the support of the international community.

It is my firm belief that the world is ready for such a move, if we consider the House of Lords' decision involving General Pinochet of Chile. Even though this dealt with torture, the general principle that the case establishes can be relied upon to expand the customary international law to the effect that past military leaders can be tried for their treasonable conduct. The trial of Charles Taylor for war crimes should be an eye opener that no one can escape the arm of the law. If we can extend his trial to cover unconstitutional means of coming to power in Africa, I am confident 70 percent of the problems of our continent would have been solved. We should make it unattractive for any misfit of society to impose himself on the people simply because he has access to the gun or any other unlawful means.

At our Southern African Universities Social Science Conference in Lusaka in 1997, we adopted a resolution, saying:

In order to deter any military adventurism on the continent, any person who uses violence or unconstitutional means to overthrow any legitimate civilian government should be debarred from ever holding public office and such a person should be pursued, prosecuted and punished for the treasonable conduct without reference to any statute of limitation (Frimpong & Jacques, supra).

The decision to prosecute persons who have come to power unlawfully should apply even to those who are currently in office. We should not set a precedent for some to be-

lieve that their coups are being sanctioned.

• **Constitutional Manipulation – Third Termers.**

Strictly speaking, it can be argued that any constitutional change to prolong the rule of any head of state is a matter that is purely within the internal laws of the country in question. However, the reality is that any change of the constitution to lengthen the stay in power of any ruler is done through manipulation, abuse of power and/ or corrupt means. Many countries have done it in the past. However, in the current trend, if we go by the Nigerian and Zambian examples, many peoples on the continent are rejecting any notion of third term. Any leader who seeks a third term through the constitutional manipulation is simply a dictator who seeks to remain in power for a longer period.

All the third term, if not part of the original constitution should be declared as having no validity anywhere in Africa. A new Article in the Constitution covering this situation should not be recognised anywhere within Africa.

• **Towards Free and Fair Elections**

The Declaration governing democratic elections in Africa and the Declaration on observing and monitoring elections lay down the framework for what can be termed free and fair elections. Again, the question is whether or not the declarations are merely symbolic or that they are serious in their applications.

We need to ensure that all elections in any member state are observed and certified to be free and fair by a credible body. What has emerged so far does not suggest that we are serious with the desire to rid the continent of dictators who will use all foul means to come to power and prolong their stay in power.

Whenever a section of the community feels that they have been cheated of their right to participate in their desired choice of a government, they tend to resort to means, violent or to seek a reversal of the “electoral results.” Again, if we refer to President Kennedy’s oft-quoted statement: “Those who make peaceful change through the ballot box impossible make violent change possible”. Evi-

dence of this happened in Cote d’Ivoire and Liberia.

Monitoring and observance of elections should not be confined to the day of the elections. The whole process should be accepted as not favouring the incumbent. This process calls for the “levelling of the playing field.”

Even though the 1994 South African elections cannot be said to have been ideal, I have argued elsewhere (Frimpong, 1999) that there are some important lessons that we can borrow from them:

- (a) The setting up of two Congresses for Democratic South Africa (CODESAS)
- (b) The Signing of the National Peace Accord through the two Congresses
- (c) The setting-up of the Multi-Party Negotiating Forum
- (d) The adoption of an Interim Constitution
- (e) Establishment of Independent Electoral Commission
- (f) Establishment of Independent Media commission
- (g) Establishment of Independent Broadcasting Authority

All of these measures were used to ensure that no one party or body had undue advantage in the holding of the elections. This is what has been termed “levelling the playing field.”

• **Effective Use of the African Peer Review Mechanism (APRM)**

A very important key instrument of the New Partnership for Africa’s Development (NEPAD) is the African Peer Review Mechanism (APRM). Its voluntarism defeats the whole purpose. It is therefore argued that it should be binding on all member states on the continent. We cannot have a section of the continent being subjected to a peer review and another section opting not to be reviewed. This clearly undermines the whole process of democratisation and the road to economic growth and development.

• **Towards Sustainable Economic Growth and Development**

Under the Democracy and Political Gover-

nance Initiative of the NEPAD, it is provided:

It is generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance. With the New Partnership for Africa's Development, Africa undertakes to respect the global standards of democracy, the core components of which include political pluralism, allowing for the existence of several political parties and workers' unions, and fair, open and democratic elections periodically organised to enable people to choose their leaders freely.

The purpose of the Democracy and Political Governance Initiative is to contribute to strengthening the political and administrative framework of participating countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of rule of law. It is strengthened by and supports the Economic Governance Initiative, with which it shares key feature. Taken together, these initiatives will contribute to the harnessing the energies of the continent towards development and eradication of poverty.

It is evident that Africa wants to eradicate itself of the terrible image of poverty, conflicts, and political instability. However, as the two quotations above have shown, the goals cannot be achieved without democratic institutions firmly established and practised. We therefore stress that economic development on the African continent will remain an illusion unless we put our acts in order and seriously tackle the root causes of the continent's protracted problems. We address the special case of corruption here.

11. Fighting Corruption

Corruption is seen as one of the major factors inhibiting development in Africa and in all developing countries. As the Director of Transparency International has observed,

"Corruption wastes resources by distorting government policy against interests of the majority and away from its proper goals. It turns the energies and efforts of public officials and citizens towards easy money instead of productive activities. It hampers the growth of competitiveness,

frustrates efforts to alleviate poverty and generates apathy and cynicism. The harms caused by corruption, which are as numerous as the shapes corruption take, have destroyed well-intentioned development projects in the South and undermined political and economic transitions in the East."

Every effort should therefore be made to fight corruption on the continent.

First, all countries should establish anti-corruption agencies with the following powers:

- I. Independent from the executive
- II. Having financial independence
- III. Having the power and autonomy to investigate and prosecuting all cases of corruption.
- IV. Should report to Parliament

Second, we should have Regional Anti-Corruption Agencies that will handle appeals from national tribunals within regional blocks – Eastern, Western, Northern and Southern. Decisions of the Regional Bodies should override those at the national level. The Regional bodies should have the power to investigate corruption within national boundaries where the circumstances indicate that the national body is incapable or unwilling to investigate.

Third, we should have one Anti-Corruption Body for the whole continent. It has to have the mandate to handle corruption cases at the continental level and in any country in Africa. It should have a very broad mandate to investigate corruption cases within national boundaries and regional areas where the corruption seriously threatens the interest of the economic, political and social status of any country or region.

Where international corporations are involved, it becomes more compelling to use either the regional or the continental anti-corruption body to handle such cases. The corruption that gripped the Lesotho Highland Water Project would have been a very good example for either the regional or the continental body to handle.

12. Implementation and Enforcement

We have made many and diverse suggestions for the way forward. The next step is to address the issue of implementation, as well as how to

enforce them.

First, we need to establish a special body within the AU that has the full mandate to oversee all matters dealing with practice and adherence to democracy, free and fair elections, respect and protection of human rights, respect for the rule of law, independence of the judiciary, and the recognition and protection of anti-corruption agencies. In other words, this body should be an umbrella institution with the mandate to ensure that all the ideals, goals, principles and values in the AU Constitution, various Declarations and NEPAD are implemented and enforced. For the sake of brevity, we shall call this institution, "Implementation and Enforcement Council." It shall be charged with the responsibility of ensuring compliance with all programmes of action and to recommend any punitive measures, such as suspension and the imposition of any sanction.

Membership should be confined to technocrats selected from different countries, excluding any political leader. However, Heads of State should participate in their election and appointment. They should serve for a maximum period of three years.

13. Conclusion

The substance of the presentations is that Africa has now come of age and the time has come for us to put into practice the ideals of the African Renaissance. The ultimate goal of the African Renaissance is the need to follow the wind of change. The wind of change blowing in Africa now, through the African Union and the New Partnership for Africa's Development, is the need to rid the continent of any unconstitutional, undemocratic and dictatorial governments through the establishment of democratic systems of government. It calls for an end to conflicts and all forms of political instability. It demands accountability and transparency operating at all levels of government institutions. It requires the rule of law and predictable legal environment within every country. It has to provide freedom, peace, security, and better living conditions for the peoples of the African continent. The peoples of Africa have suffered for far too long, be it under slave trade, colonial rule,

neo-colonialist system of government, or a new breed of post-colonial masters, in the form of military dictators or one party-despots or barons.

We are simply saying that enough is enough. Africans deserve a better deal and are therefore demanding that their governments should exist for the people and be accountable to the people. Any leader who does not subscribe to these ideals should not be recognised by the AU and the international community. We are therefore calling on all Africans and the international community to support this clarion call. As Brutus would say,

On such a full sea are we now afloat, and we must take the current when it serves or lose our venture" (Dorsch, 1988).

Notes

Abdul-Raheen, Tajudeen, (1999). Democratisation and Conflicts in Africa. A keynote address at the Development Policy Management Forum (DPMF) Democracy, Development and Conflict Conference, Addis Ababa, Ethiopia, 23 - 26 November 1999.

Amodu Tijani v. Secretary of Southern Nigeria [1921] AC 399. Lord Haldane quoted with approval a passage from Renner, CJ's Report on Land Tenure in West Africa, 1898.

Ayittey, George, B.N., (1991). Indigenous African Institutions. New York: Transnational Publishers, Inc.

Bell, Morag, (1987). Contemporary Africa. New York: John Wiley & Sons, Inc.

Boahen, A.A., (1986). Topics in West African History. New York: Longman.

British Broadcasting Corporation, BBC, (1999). News of Monday, 13 March 2000.

Constitutive Act of African Union, 2000.

Dorsch, T.S., 1988. Julius Caesar, (The Arden Shakespeare). London: Routledge.

Eaton, J.W., (1964). Prisons in Israel: A Study of Policy Innovation.

Frimpong, K. (1982). "Some Reflections on Gha-

na's Penitentiary System", *Yearbook of African Law*, 3: 85-103.

Frimpong, K. (1992). "Searching for Alternatives to Imprisonment: An African Experiment", *South African Journal of Criminal Justice*, 5(3): 233-253.

Frimpong, K. (1997a). *Structural Adjustment and the Myth of its Success in Ghana*. In Hope, K. R. Snr. (ed.), *Structural Adjustment, Reconstruction and Development in Africa*, Aldershot: Ashgate Publishing Company.

Frimpong, K. (1997b). "Towards an Effective and Humane Prison Service". A Keynote address given at the 3rd Conference of Eastern, Southern and Central African (CESCA) Heads of Correctional Services, held in Gaborone, Botswana, 20-21 February 1997.

Frimpong, K. (1998). "Legal Framework for the partnership". A paper presented at the 20th African Association for Public Administration and Management (AAPAM) Roundtable Conference, held in Nairobi, Kenya, 30 November to 4 December 1998.

Frimpong, K., (1999a). "Some Pitfalls in Africa's Quest for Democratic Rule and Good Governance". In Frimpong, K., & Jacques, G. (eds.), *Corruption, Democracy and Good Governance in Africa: Essays on Accountability and Ethical Behaviour*. Gaborone: Lentswe La Lesedi.

Frimpong, K., (1999b). "Forging Partnerships Between African Universities and Civil Society". Paper presented at the International Association of University Presidents (IAUP) Africa Regional Council Conference, Accra, Ghana, 9-11 June 1999.

Frimpong, K., & Jacques, G. (eds.), (1999). *Corruption, Democracy and Good Governance in Africa: Essays on Accountability and Ethical Behaviour*. Gaborone: Lentswe La Lesedi.

Kimani, E. 1998. *Gender and class in the struggle for democracy*. Paper presented at the DPMF Democracy Conference II: *Democracy, Civil Society and Governance in Africa*, 7-10 December, Addis Ababa, Ethiopia.

Mafeje, A. 1999. "Democracy, Civil Society and Governance in Africa". In DPMF Proceedings of the Second Annual Conference on Democracy, Civil Society and Governance in Africa II, 7-10 December, Addis Ababa, Ethiopia.

Mbeki, President Thabo, (1999a). *Address of the President of South Africa at the Launch of the African Renaissance Institute, Pretoria, 11 October 1999*.

Mbeki, President Thabo, (1999b). *Speech of the President of South Africa at the Opening of Parliament: National Assembly, Cape Town, June 25, 1999*.

OECD. 1995. *Participatory Development and Good Governance*. Paris: OECD.

The New Partnership for Africa's Development (NEPAD), 2001.

Wilks, Ivor, (1975). *Asante in the Nineteenth Century: The Structure and Evolution of a Political Order*. Cambridge: Cambridge University Press.

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A VIEW OF DEMOCRATIC GOVERNANCE IN AFRICA WITH THE SUDAN IN MIND

DR. RICHARD A. LOBBAN, JR



I. Introduction

First let me express my gratitude to the conference organizers for the important conference sponsored by the International Institute for Justice and Development and for this opportunity to address this audience. This paper surveys some of the history of traditional systems of African governance and how they were derailed and damaged by colonialism. This conference will certainly contribute to the recovery process of African governance by exploring some of the steps that can be taken to restore African democracy and local grassroots governance. This is a matter that is both difficult and very urgent.

There is a deep tradition of pro-colonial democracy at the village level in horticultural societies, in particular where mechanisms of local level consultation, mediation and conflict resolution were widespread and functioned smoothly. Colonial administrations projected themselves as being on a ‘civilizing mission,’ with a self-proclaimed need to ‘pacify the natives.’ The fact was that colonialism was violently opposed and the lesson to be learned by ‘the natives’ was that ‘might makes right.’ Grassroots populist democracy was a threat to the oppressor. There was really noth-

ing fundamentally democratic in imposed foreign rule, which sought to celebrate its own sentiments of nationalist and imperial grandeur, while exploiting African resources, compelling Africans to toil under burdensome taxes and obligations, and denying expressions of basic freedoms and human rights. Amazingly, this obvious injustice is sometimes misunderstood as the roots of modern African democracy. It was the genuine democracy of African mass action in demonstrations, petitions, and even armed resistance that finally was mobilized against colonialism that was the much more proud manifestation of democracy.

Sadly, many post-colonial governments could not think out of the colonial “box” and applied the colonial lessons thinking that military rule was appropriate and repression of fellow citizens a justifiable on the path of development. The record is now painfully clear, the military in power makes more problems than it solves and the suppression of basic freedoms and human rights causes brain drain, economic or political refugees, and diverts developments’ goals and resources.

Clearly Africa has an immense diversity in language and ethnicity so it is reasonable to discover great variation of political systems. They can range from fully egalitarian, to redistributive chief-tains, or other equitable political systems, to tyrannical kingdoms, regional states and substantial empires from the most ancient and medieval periods right down to the present. No single description can characterize all of this diversity. However, most of these political systems were suppressed, derailed, transformed, distorted and manipulated by the superimposition of colonial rule whether by direct or indirect administrative policies employed by colonialists. Africa is still in the recovery mode from colonialism not to mention the complex demographic, moral and legal legacies

of the prior centuries of slave raiding and trading.

It is also important to note that while there are some very serious conflicts and issues in Africa today, perhaps part of our human condition, most African nations are more or less democratic, at least in form, even if not fully functional. In fact, some African nations have vibrant multi-party democracies by any standard. Formal colonial rule and white supremacy have been brought to an official end. In some cases the struggle to end racist and colonial relations was only recently concluded. Africa is now fully decolonized at least in terms of foreign flags flying over the motherland of humanity. Yet, some lingering colonial and neo-colonial attitudes still need further reflection and restructuring.

As long as the avenues for peaceful protest are blocked, the expression of democracy may likely be violent with revolutionary sentiments and practices of resistance to marginalization and subordination by ethnicity, religion, class, gender, or other conflicting models of identity. Needless to say, empowerment by violence is not to be recommended, but it can certainly be understood in context where alternatives are not present. Tragically, episodic conflicts are not so uncommon in modern Africa. The list of bloodied places can include eastern Congo, Nigeria, the Lakes Region, the Horn, Algeria, Mozambique, Angola, Zimbabwe, Rwanda, Liberia, Ivory Coast, Sierra Leone and other lands as well. Following a brief survey, I will turn to specifics of the situation in Sudan, including both the peace in the “Comprehensive” Peace Agreement between the North and the South, but also the very alarming issues in Darfur that are presently unfolding, as well as the sporadic urban protests and the conflict in the eastern Sudan that are not resolved.

II. African Inheritance of Traditional Models of Governance

Since time can remember, immemorial Africa has implemented many fundamental elements of grassroots democracy. This is especially visible in egalitarian bands that were distributed across the continent, in fact, across the globe until systems of centralized power based on agriculture and

domestic animals began to erode them. Even the models known by the Latin expression *primus inter pares* (or first among equals) were extremely widespread on the African continent. Such models were at the foundation of councils of elders, or even in early Islam with the Shura councils that found their legitimacy upon the consent of the government and by mediated consultation until a consensus was finally reached. Even in pre-literate contexts it is clear that there were informal “laws” of precedence, guidance by parables, oracular consultation, informal “police” systems with age-grades and masked groups such as the *poro* societies in parts of West Africa. Rulers who did not look after the reasonable demands of his or even her subjects for redistribution were not long on their stools. The common understanding that leaders had divine legitimacy and carried the spirit of their peoples, lands and livestock meant a great seriousness in consideration of evidence in disputes and in dispensing equitable justice.

On the other hand, the African traditions of governance include elements of potential or real despotism in ancient, medieval and pre-colonial times. We should not be misled by myths describing Africa of these times as some idyllic place and moment where class cleavages, slavery and exploitation did not exist. Even the glorious, but imperial, states of Ghana, Tekrur, Mali, and Songhai across the Sahel had their class contradictions and social injustice, especially during times of conquest. Traditional modes of African slavery might have some favorable points of comparison with the sustained and brutal Atlantic or trans-Saharan trade, but they were still arbitrary and alienating with the collaboration of some autocratic and brutal monarchs.

The record is clear in these respects and there was certainly abuse in some case of divine kingship and in narrow institutions of dynastic succession and endogamous elites. The point here is that this did not differentiate Africa from the rest of the world in these respects. Africa was pretty much typical and we need to take the good and the problematic in Africa’s past systems of governance. There is a very rich and complex inheritance for human and democratic interaction found in the annals of African history and there is an inheritance

of anti-democratic traditions in Africa as well.

However, it was largely the case that the positive, humane and equitable traditions were more often suppressed or suspended under colonialism, especially in local level grassroots governance. It was often the negative and sometimes ruthless traditions that were reinforced to serve to corrupt and challenge traditional practices supporting European interests and the colonial practices that used traditional undemocratic hierarchy as an instrument of colonial rule.

III. The Colonial Era in Africa

Africans became involuntary witnesses and victims to the uninvited and unwelcome occupiers of their continent. They resisted when the true colonial mission was understood. Cases of heroic and stubborn struggle are well known for the Mahdi of Sudan, western savanna jihads, the Ashanti of Ghana, the kings of Ethiopia, the Zulu of South Africa, the MauMau of Kenya, and parallels in Egypt, and Algeria just to mention a few. But colonial partition carved their territory into pieces that were machine-gunned and cannonaded into 'pacified' hunks that demarcated "effective control" with graves and gallows in the sustained military programs to 'exterminate the brutes.' Exploitation through forced labor and coercive taxation by European powers was masked by a supposed 'civilizing' mission and the supposed the 'White Man's burden' that Europeans picked up with paternalistic reluctance. This is not a pleasant chapter, but it needs frank exploration to grasp the predicament of modern Africa as well as the perception that if Europeans are coming again, great caution is required. It would be difficult to find the roots of democracy and African development in these chapters.

The colonial experience was ideologically lubricated with complex forms of racism and arrogance. These denigrated African culture and history and subordinated 'Africinity' to European national chauvinism that could only be built on African self-denial and wearing Black Skins covered by White masks. But like all contradictions, the European military conquest of the continent and the needs for African troops in World Wars

I and II also pointed in a new direction for Africans heading toward their own acquisition of military skills, and national ambitions. Even the colonial needs for a trained and literate civil service did contain the seeds that would undo colonial dominance. If pan-Europeanism was a major source of the problem, then Africans could conclude that Pan-Africanism was necessarily part of the solution. This is still in process from the days of WEB DuBois, George Padmore, Duse Mohamed and Marcus Garvey and on to Kwame Nkrumah, Gamal 'abd al-Nasser, Jomo Kenyatta, Eduardo Mondlane and Amilcar Cabral on to the OAU and the rise of the AU today. By the way, if you don't know these names it is time to find out!

The more the intellectuals were suppressed, imprisoned, assassinated, and executed the more they became galvanizing heroes and a spiritual force to carry on with the struggles of the day. Now, a damaged Africa IS getting its act together, as ECOMAG forces in West Africa have proven and regional association are starting to find points of common alliance rather than colonial division. Likewise with the colonial needs for primary production and manufacture, communications, teachers, clerical workers, and transportation workers the modern African working class would not have evolved in the way it has. And when they became aware that they were essential and crucial for colonialism to survive, it was these workers and organized farmers who could ultimately sow the seeds of colonial destruction.

Can we possibly expect that the gravely dysfunctional colonial experience did not lead to a continent-wide Post-Traumatic Stress Disorder? The 700-pound gorilla in this case was that, in the guise of bringing "civilization" to Africa, colonialism ushered in one of the most brutal and fundamentally undemocratic occupations one might imagine, where traditions, kinship, language and economies were all savagely undermined. The internal boundaries of Africa arbitrarily slashed the African continent into small managerial parts and the age-old imperial approach of 'divide and rule' was employed with surgical precision for reasons of colonial vanity, domination and the exploitation of its labor and natural resources. Should

we wonder why African unity is hard to achieve?

So, one may say that colonialism was broadly undemocratic in its mission and practice and it was militarily imposed to block, compromise, or corrupt the democratic upsurge and interests of the vast majorities of African peoples. Colonialists lived in fear of one person-one vote and found clever or brutal ways and ideologies to be sure it could be thwarted. Yes, buried within this dialectical relationship with colonialism were self-interested African political parties, popular resistance in various forms, mass mobilization and broad democracy Africans struggling to regain the track of their own history and move toward an accountable, transparent and legitimate system of rule and rulers. When this converged at a time of European weakness in the immediate wake of World War II and one by one for thirty years Africa again started to take control of its own destiny. As the layers of colonial values were peeled away and set aside, other deeper historical layers were also revealed. Some are still not processed, such as in arenas of land reform, elite psychology, and colonial prejudices. These internal contractions are also seen in the fact that often the seeds of African nationalism were sown in European capitols and in European languages. However the liberated minds of the new and successive generations of African intellectuals were not oppressed by European places and languages, it was the political economy of colonialism and the marginalization of post-colonial neo-colonialism that are the problems that need to be cured.

IV. The Post-Colonial Period

In the relatively recent colonial past and at present, one should not be surprised that the scars and handicaps of colonialism are still fresh, and a wounded infrastructure and mentality is not fully scoured away, nor is the inherited political economy of a global market structure that is not under African control. Africa is still suffering deeply from these illnesses and from distortion and neglect in health, service, transport and communication and low levels of literacy, along with high levels of child labor and child soldiering for bloody

diamonds. Africa is developing with a hand tied behind its back and feet still hobbled. The transition is painful in other respects. As the Arabic saying puts it ‘the accusatorial finger of blame has three pointing back at the owner’. Colonialism can be blamed for a lot, but Africans can only blame themselves if they allow this burden to be passed on to the next generation. Endemic corruption, the lack of adequate conflict resolution mechanisms and Pan-African peace forces, mediators, and the incomplete and deferred post-conflict processes of truth and reconciliation steadily became more the responsibility of Africans. There are Africans who should be judged for their own crimes against fellow Africans. The faster there is progress in these areas, the faster there will be development and progress. When progress is slow in this area, the more the colonial legacy will be self-fulfilling, problematic, and prophetic.

“Africa is developing with a hand tied behind its back and feet still hobbled.”

Now, with colonial armies and governors gone from the scene the possibility of development and democracy is at hand and national sovereignty is restored and the subordinated “tribal” people are reconfigured and regrouped as multi-ethnic federal and decentralized nations with democratic futures and resources in their own hands. ‘Core and Periphery’ relations are an internal problem IN Africa when local urban elites suck out the wealth of neglected rural areas. In this context it is more likely that international ‘Core and Periphery’ relations and marginalization rooted outside of Africa can be perpetuated onto the destabilized continent. Failed and collapsing states are a serious problem for domestic and national stability and security, as well as regional and global security.

But there are other problems too that

block the path leading to the highway of democracy and development. The models of military rule and oversight that clearly truncate the growth of democracy are increasingly rare. Happily more and more soldiers are returning to their barracks now that the self-proclaimed mythology of their “stabilizing influence” has been blown away with the dry winds of the Harmattan. It is sad, too, that the wealth of Africa is partially consumed on wasteful military spending in a land so starved for economic resources to meet pressing human needs. There are parallel concerns about wasteful petroleum energy policies and consumption and the very “curse” of oil in a land so endowed with water, solar, and green power. This is especially sad when considering the greenhouse effects of global warming and the corrosive history of oil for supposed equitable development.

“The test of ruling parties being voted out of office without tanks surrounding the presidential palace is found more commonly, but there is certainly room for improvement.”

One-party or hegemonic parties exist that are repressing democratic opposition and human rights that stifle human creativity and send African citizens into refugee camps, regional dispersal, and to a global diaspora of desperation in unworthy ships. This is a true shame. Truth and Reconciliation about such abuses are needed to unleash dynamic African energies in the arts, culture, medicine, sciences, law, education, and engineering, not to have its trained experts languish in African prison cells.

Multi-party democracies are increasingly found on the continent from Senegal to Tanzania, from Cape Verde to Ghana and South Africa. The test of ruling parties being voted out of office

without tanks surrounding the presidential palace is found more commonly, but there is certainly room for improvement. Institutionalized patterns for transparent voting in successive election are needed.

In short there is an urgent need to broaden the democratic spirit and practice in Africa. This is not just an attractive “add-on” but a fundamental necessity in order to have any hopes in achieving at least seven critical objectives:

1. Having transparency and accountability in the equitable distribution of natural wealth.
2. Curbing ethnic or religious strife with democratic models of conflict resolution using referenda and elections.
3. Strengthening women’s and human rights to mobilize all human resources for development.
4. Monitoring and blocking abuse of African youth, especially in child soldiering, labor and prostitution
5. Advancing health and educational issues especially on HIV/AIDS and parasitic and nutritional disorders.
6. Addressing the issues of the brain drain, IDPs, labor dislocation and diasporic problems.
7. Using the African diaspora populations for technology and wealth transfer back to the continent.

V. The Case of Sudan without Democracy

I have spent almost four decades in professional study of the Sudan, with long periods of residence there and frequent visits. I am profoundly troubled to find that when the golden anniversary of the independence of Sudan from British rule was celebrated earlier this year, but in these fifty years there were only 11 years of dynamic multi-party democracy while there were 39 years of military governments that bogged the nation down in futile and endless wars leading to prodigious waste of human and natural resources that could easily have been used to develop the nation but were ground up in military consumption. Yes, Sudanese democracy was not very stable and yes, there are serious limitations with the Arab-Muslim vs. African identity debate and yes, there is marginalization of the south and other peripheral regions. But

a bad democracy was way better than a good war, and the longer periods of military rule brought great failures in loss of life, loss of national unity and political repression with its consequent brain drain. Simple staying in power cannot be the best measure for a policy of national unity. Truly the lack of democracy has perpetually been at the core of the North-South struggle, in the strife in the eastern Sudan and is also central to the marginalization of the human and political catastrophe in Darfur. With no functioning democratic institutions the preferred and desperate means of addressing grievances has been by force and violence on all sides. Regional and national ruin result. The Sudan and Darfur have become the icons of a pariah nation and human destruction. Sudan has been unable to construct a viable unitary nation after a half a century and this is due, in part, to severe limits on political imagination where debate and vote, and the free exchange of ideas are abridged. Socialism, Capitalism, Islamism, and Militarism have all been tried but the lack of democracy in these experiments has led to very unequal and destabilizing development. The twinkling light, however imperfect and stumbling that it may be, is the Comprehensive Peace Accord or the Navaisha Agreement of January 2005. Yes, it may not be so comprehensive and the peace is tentative, but this resulted from talking with one another rather than shooting. If the CPA is implemented in this land of “Too Many Agreements Dishonored,” in 2011 a referendum is slated to peacefully and democratically determine the next relations between these two regions. With this all in place, and with the millions of already lost lives it would be tragic indeed to turn back to war that has little to show for the millions of dollars consumed in wasteful destruction. It appears that this is the last chance. Democracy, development and mutual respect or divorce.

The Sudan is also leaping forward in oil discovery and production. The present and future oil revenues are destined to be huge but are also very complicated with the oil largely in the south and the pipeline heading to the north. With democracy there is some hope that the inherent problems might be resolved and the national unity of Sudan preserved with equitable wealth distribution. But

with military “solutions” the result is equally clear in massive national and regional destabilization. We do not need to guess what might happen. One reason that the CPA has its problems is that other groups such as the National Democratic Alliance were not included, not to mention the exclusion of the still extant traditional parties of the north and the slow transformation of the SPLA into a genuine political party with which all southerners might not agree. Inclusion and representation must be part of the democratic foundation. Similarly the Darfur Peace agreement in 2006 offered some hope, but the exclusion of other conflicting parties and Khartoum-backed militias has led to a grave impasse that might portend a new outbreak of bloodshed and mayhem. There is a path to development and peace through democracy, but only a path toward greater destruction without it. Furthermore this will serve to destabilize the nine other neighbors of Sudan, not to mention that Sudan itself could proceed on the road to a failed state with such amazing promise in its people and resources already seen at various points in its long and rich history. The stakes are very high indeed. Perhaps we can discuss these points more fully later.

The Case of Cape Verde with Democracy

To conclude on a higher note, let me also add that when I traveled with the guerillas fighting against Portuguese colonialism in Guinea-Bissau as an embedded journalist in the 1970's, I saw the power of mass mobilization. Even with the murder of Amilcar Cabral at the historical finish line, the war of national liberation was won! When those remaining leaders became the ruling single party of Cape Verde I believed that they still represented the majority. When those leaders agreed to have multiparty elections and were peacefully voted out of office, I was sad to see my friends leave office but they left power with democracy intact. And when after two terms they could get voted back in office by a razor-thin margin from Cape Verdeans in the diaspora I knew that my hopes for a brighter future in Africa were at hand. Even for this poor island nation, there is development. There is peace, stability and security. Spread the word, Africa is on the move again!

VI. General Conclusions

So, whether in Sudan or across the continent, we can see the terrible price to pay for African states lacking vibrant and meaningful democracy, or in the bright lights in Cape Verde, Tunisia, Ghana, Tanzania, Namibia, and elsewhere where the banner of democracy is inching up the mast. One may observe that without democracy there is:

1. Political anxiety and insecurity leading to potentially failed states.
2. A power vacuum that creates fertile ground for polarization and extremist ideas and practices.
3. Little accountability, and with few checks and balances there will be corruption.
4. A severe problem of brain drain and refugees from strife or lack of opportunity.
5. Marginalization of social groups who are not brought into constructive engagement with development.
6. Exclusion of imaginative and fresh perspectives excluded from public debate perceived as a regime threats.
7. Only weak or unrepresentative peace accord that risk failure.
8. National capital and human and natural resources that will be lost without full gain to the society.
9. Internationalization of conflict resolution that will erode national sovereignty
10. Unpredictable violent protest arising from frustrations in the lack of meaningful democratic forums.
11. A lack of elections and secure, internationally monitored referenda that are recipes for renewed violent conflict.

Even weak and hesitating inclusion is better than rigid exclusion. Clearly broadened democracy is the only path to genuine development and justice. Please add your voices for a much brighter future for Africa and the world.

DR. RICHARD A. LOBBAN, JR.



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PROSPECTS FOR PEACE, DEVELOPMENT AND COOPERATION IN THE HORN OF AFRICA

DR. SISAY ASEFA

The Horn of Africa: Background, Scope & Regional Initiatives

The Horn of Africa is one of the most important and strategic areas of Africa and the global economy. It is a bridge between Africa and the Middle East, as well as a gateway to the oil fields of the Persian Gulf. It is a culturally and historically rich region of the world with great natural resource potential. Specifically, the Region is endowed with rivers, lakes, forests, livestock, and high agricultural potential including untapped potential of petroleum, gold, salt, hydro-power and natural gas. The Horn is also a region of diverse ethnicity, languages, and religious practices. It is a region where two of the world's major religions- Christianity and Islam have co-existed peacefully for generations. This is especially true in Ethiopia with some exceptions. For example, it has been historically reported that a group of Islamic followers from Arabia took refuge in the 7th century in the Ethiopian highlands, where they were well treated and practiced their religion freely. As a result, the Prophet Mohammed concluded that Ethiopia should not be targeted for Jihad or Islamic religious wars. There are, however, historical exceptions such as the invasion of Ahmed ibn Ibrahim al-Ghazi (known as "the left handed") until he was defeated in 1543. The last Islamic threat to Ethiopia was in 1888, when Sudanese Mahdists attacked the former capital of Gondar, and were defeated at the Battle of Me-tema on the Ethio-Sudanese border (Shinn, 2002).

In this paper, the Horn of Africa is defined broadly to include the current states of: Djibouti, Ethiopia, Eritrea, Somalia and Sudan, including Kenya and Uganda (see figure A1). The Greater Horn covers an area of 5.2 million sq. km with a

population of 165 million that constitutes about 25 percent of the entire population of Africa. The narrower conception of Horn of Africa excludes the states of Kenya, Sudan, and Uganda. The broader definition is both purposive and more appropriate for successful economic integration that reflects the diversity and greater economies of scale that is possible from the Greater Horn than the narrower conception of the sub-region. It is also consistent with the existing regional development initiative established by the states of the Region.

Three regional initiatives that can serve as the basis for regional cooperation have been established. These include the Common Market for Eastern and Southern Africa (COMESA), the Intergovernmental Authority for Development (IGAD), and the New Partnership for African Development (NEPAD).

IGAD was first founded in 1986 under the name of the Intergovernmental Authority on Drought and Development (IGADD), reflecting the need for partnership to combat the widespread famine, ecological degradation and poverty in the Region. The Organization was reconstituted under its current name of the Inter-Governmental Authority for Development (IGAD) in 1996, and given broader mandate for regional development activities. IGAD's membership includes seven countries: Djibouti, Ethiopia, Eritrea, Kenya, Sudan, and Uganda. IGAD's primary stated mission is "to achieve regional cooperation and economic integration through the promotion of food security, sustainable environmental management, peace and security, intra-regional trade, and development of improved communications infrastructure" (IGAD, 2000). While the general goal of IGAD is to achieve economic integration and sustainable

Common Market for Eastern and Southern Africa (COMESA)



Nile Basin Initiatives (NBI)



Horn of Africa Free Trade Area (HAFTA/IGAD)



East African Cooperation (EAC)



Alternative and Overlapping Regional Economic Groups

Figure A1

development for the sub-region, its specific objectives include the: 1. Creation of an environment for cross-border domestic trade and investment, and the 2. Harmonization of policies with regard to trade, customs, transport communications, agriculture, and natural resources, and the promotion of free movement of goods and services, and people within the region. IGAD has played an important role in the area of conflict resolution, including in the Sudan and Somalia peace processes. Thus, IGAD is a natural organization with institutional and human capital, and experience invested by the states of the region and the international community, on which to build a workable economic cooperation based on 16 years of experience.

COMESA is a larger regional economic cooperation of 20 member states that includes the 7 IGAD countries plus an additional 13 states in Eastern and Southern Africa. It was first established in 1981 under the name of Preferential Trade Area for Eastern and Southern and Africa (PTA) within the framework of the Lagos Plan of Action. COMESA was formed from its original name of PTA in 1994. It has plans to become a Customs Union in 2004. Although the total population of COMESA states is about 400 million, the total economy is about the size of Belgium, a small country in Europe of about 10 million people.

NEPAD is the latest initiative that was established by a group of African states in 2001 and subsequently adopted as the continent's main development framework at a July 2001 summit meeting of African heads of state. According to NEPAD, Africa's long term development goals can only be achieved if African peoples can "extricate themselves and the continent from the malaise of underdevelopment and exclusion in a global economy." It calls for new partnerships between Africa and the global economy, in which non-African partners seek to complement Africa's own efforts. NEPAD calls for three necessary conditions for Africa to develop: 1. Peace, security, democracy, and good political governance, 2. Improved economic and corporate governance, and 3. Regional cooperation and integration. Thus, NEPAD correctly places the critical issues of governance at center stage of both political and economic re-

forms in Africa. It further identifies priority areas such as human development, agriculture, physical infrastructure, and export promotion and diversification for transforming African economies.

Recent and Current Political Realities of the States in the Horn of Africa

The Horn of Africa is one of the most conflict-ridden and unstable sub-regions of Africa and the World. Decades of war and destructive state intervention by dictatorial regimes that ruled the Sudan, Uganda, Ethiopia, and Somalia in the 1970s and 1980s have caused massive de-capitalization, brain drain, environmental degradation, poverty and famines. The conflict and instability of the Region has both intra-state, inter-state, and global dimensions.

For instance, there has been a raging civil war in the Sudan for 22 years that has claimed about 2 million lives and destroyed the country's resources. The Sudan peace agreement with the SPLA was included in June 2005, and Unity Government was signed by the Sudanese Government in Khartoum and by the late Dr... John Garang, the SPLA leader. Garang became Vice President of the country as a part of that agreement, which gave Southern Sudan an autonomy for a six-year transition period after which Southern Sudanese will vote to remain part of Sudan as an autonomous state or become independent state. Ethiopia and Eritrea concluded a two-year vicious war in 2000 that claimed about 100,000 lives and destroyed the resources of both countries.

Somalia can be regarded as a collapsed as a nation-state in 1991, with a de facto independence of Northern Somaliland and Puntland. The collapse of the Somali state, the only one in Black Africa with a common national, ethnic and religious identity, raises a serious question for theorists of ethnic nationalism (Markakis, 1996). If ethnicity or tribal differences are the primary reasons that prevent Africans to peacefully live together as claimed by some scholars of Africa, why did the Somali state disintegrate? The Somali has reverted to the pre-colonial pattern of clan autonomy during post-Cold War period. During the long rule of Siad Barre (1969-1991), the main ben-

efficiaries were the clans that supported his regime.

Post-Barre Somalia emerged with a ragingly violent political struggle as clans sought to confiscate resources and land previously expropriated by the late Dictator's supporters, and terrorized the local population. The clans see the state as source of revenue, much of which is derived from abroad through foreign aid, and each demands a share through violent means (Markakis, 1996). The Somali state disintegrated when certain clans acquired a virtual monopoly of state power and resources, prompting others to take up arms to redress the balance. It is a classic case of conflict driven collective failure among political elite, preceded by a dictatorship and arbitrary use of state power. Amidst the collapse of the state, the clans now contend for whatever resources and wealth is still available; food aid, port levies, road tolls, and taxes on trade (Ibid).

Uganda has engaged in internal war in the North with a fundamentalist Christian group known as the Lords Army, as well as a conflict in the western part of the country. Although Kenya boasts one of most successful economies of the Region, the country has some political problems of transition that need to be resolved democratically. Kenyans changed the one party rule of former President Moi of Kenya by free elections in 2004, ending the rule of the Kenya African Union (KANU) which ruled since independence. The tiny state of Djibouti went through a civil war after independence from France in 1976, which set its fragile economy back (World Bank, 2002).

Ethiopia is experimenting with a unique form of ethnic federalism, following the demise of the vicious dictatorship of Colonel Mengistu 1991. Ethiopia's experimentation with ethnic federalism has not led to the collapse of the county so far as predicted by some. However, it cries for an urgent need for reform due to its incompatibility with a viable democracy and mobility of labor and capital required for market based development in the long run. Ethiopia is facing potential inter-ethnic and intra-ethnic conflicts that follow from the politicization of ethnicity, including the demand for secession by some ethnic groups. These groups claim that they have constitutional rights

provided in Article 39 of the current Constitution, which allows for "the right of self-determination of ethnic nationalities including session."

"In addition to the monopoly and arbitrary use of political power, the politicization of religion and ethnicity (including clanism) is one of the major causes of inter-state and intra-state conflict in the Horn states."

The primary cause of these intra-state and inter-state conflicts in the Horn of Africa is the problem of concentration and arbitrary use of power, which continues to be practiced by the states of the Horn of Africa with various degrees. The recent Ethio-Eritrean war that resulted is a classic case of arbitrary and reckless use of concentrated political power. Such exercise of power exists in other states of the Horn such as the Sudan, both at the state and within state regional and local levels in the form of ethnic and clan-based war-lordism, and creates havoc and atrocities on the local population. In the Sudan, the reckless exercise of power is manifested in the hegemonic imposition of Fundamentalist Political Islam on the southern peoples of the Sudan by the Government of that country in Khartoum. This religious hegemony is one of the primary causes of the long civil war in the Sudan. One of the best ways of overcoming these inter-state and intra-state conflicts in the Horn is by promoting democratization and political reconciliation among the political elites of the region in a secular fashion. Here secularism is defined as a non-religious and non-ethnic system of domestic state governance. The separation of politics from religion and ethnicity is a crucial element for building successful democracies. It is also major feature of working democracies around the world.

In addition to the monopoly and arbitrary use of political power, the politicization of religion and ethnicity (including clanism) is one of the major causes of inter-state and intra-state conflict in the Horn states. The political manipulation of ethnic, clan, and religious sentiments by the elites and rebels of the Region, for the purpose of controlling resources and gaining or retaining power, and their refusal to create a democratic institutional framework to diffuse power and decision-making to the local population in a secular (non-ethnic and non-religious) fashion is a major factor of the conflicts.

Each of the Horn states needs a peaceful national domestic political reconciliation before they can move forward to form any viable regional political confederation. Such inter-state re-conciliation must be inclusive, free of religion and ethnicity or clanism, and democratic. It must be based on inclusive, open and peaceful participatory dialogue among civil society groups, elders, farmers, and traders, and other stakeholders within each state. Specifically, the role of elders with long-institutional memory, as well as independent academics, is crucial to begin a constructive dialogue that may lead to a viable political reconciliation at the inter-state and intra-state levels.

There is also an external dimension to the conflict and poverty of the Horn of Africa. For about three decades, regional conflicts in the Region were fought under the shadow of the Cold War.

Before the collapse of the former Soviet Union, both the Soviet Union and the United States considered the region of great strategic importance. They took turns supplying successive regimes of Ethiopia and Somalia with military hardware to support their internal and regional wars. For example, the former Soviet Union supported the Barre regime of Somalia against Ethiopia prior to 1974/75, and the United States was a major supporter of Ethiopia during the long rule of the late Emperor Haile Selassie that ended in 1974. During the rule of Colonel Mengistu of Ethiopia, 1974-91, the U.S. and Soviet Union switched sides. Ethiopia became a client state of the Soviet Union during Mengistu's rule that ended in 1991, and the US moved next door to support the Somali government. After the disintegration of

the former Soviet Union in 1991 that ended the cold war, the United States abandoned the Barre Regime in Somalia, and the Soviet Union did the same with the Mengistu Regime in Ethiopia. As a result, both regimes of Ethiopia and Somalia collapsed in 1991 driven by rebel forces, about the same time as the disintegration of the former Soviet Union into the current 15 independent states.

New Post- Cold War Challenges in Ethiopia and the Horn of Africa

The U.S. has emerged as the only remaining world super-power since the end of the Cold War and the Horn of Africa is facing new challenges and realities. One of these challenges includes the rise of militant fundamentalist movements in the Horn based on religion, ethnicity and clanism. Many of these are organized groups directed and financed from abroad. One example is the National Islamic Front (NIF) in the Sudan, which has been accused of masterminding a campaign aimed at destabilizing its neighbors. NIF has intentions to impose Islamic rule in the Sudan and the entire Horn region. There are also fundamentalist groups in Somaliland, Southern Somalia, and Djibouti. Islam is traditionally not a problem here. In Ethiopia for example, Islam and Christianity have coexisted in countries such as Ethiopia in a relatively peaceful harmony for generations.

The penetration of Islamic Fundamentalism or Political Islam is both recent and external to the Horn of Africa. For much of history the two major world religions of Christianity and Islam have co-existed in relative harmony in the Region. An example of this recent penetration is the overthrow of Sadiq-Al-Mahdi's democratically elected government in the Sudan in 1989 supported by Iran and guided by National Islamic Front (NIF) and its ideologue Hassan El-Tourabi. For example, Tourabi is reported to have wished the following for his neighbor:

"Ethiopia will self-destruct in the near future, thus paving the way for the establishment of an Islamic state and resulting in a chain of Islamic polities extending from the Sudan to the Indian Ocean" (Africa Confidential, 1995, Tekle, 1996).

What is needed is the reconstitution of Ethiopia and the other states of the region under democratic and secular (non-ethnic/non-religious) lines to bring about stability and sustainable development to themselves and to benefit from regional cooperation. Ethiopia, as the most populated country in the Horn, is the linchpin of the region.

A democratically re-constituted and free Ethiopia can become an anchor or focal point for economic development in the Horn of Africa. It is noteworthy to point out the best days of the Horn of Africa were the 1960s, during the period when Ethiopia was strong and united. Although Ethiopia was not a democratic state during this period, the country was gradually evolving toward a viable economy and society to which African states and black people elsewhere looked up for leadership and inspiration. For example, the first political Union of African states following independence, the Organization of African Unity (OAU), as well as the Economic Commission of Africa (ECA) were established in Addis Ababa in the 1960s. The 1960s were also the period when Ethiopia's institution of higher education, the former Haile Selassie First University, was a leading institution of higher learning in Africa, along with the other Universities of the region such as Makerere University and the University of Nairobi. Moreover, the Country's national airline, Ethiopian Airlines, was unmatched in the rest of the Africa and the developing world and to this day continues to provide an excellent service connecting Africa to the rest of the world. The economy, especially the manufacturing sector, was dynamic.

Indeed in the 1960s, the prospects for Ethiopia and Africa in general were so promising that leading scholars of the time such as Swedish economist Gunnar Myrdal forecasted a promising scenario for African states like Ethiopia and Ghana, and a dismal future for Asia and India. Thirty years later that forecast was wrong. Asia was moving forward, and African economies were stagnating or declining. This is not a call to move backward in history, but to take constructive lessons for the future based on past experiences in order to face up to new challenges and realities. It would be beneficial to reflect on the consequences

of elite-driven politicization of history, ethnicity, and religion, which may have implications for re-constructing the economies and societies for sustainable development and economic cooperation in the Ethiopia and the Horn of Africa.

For example, the "problem" of ethnicity or ethnic nationalism in Ethiopia and the other states of the region is highly politicized. The key problem is not one of ethnicity or tribalism. It is a basic democratic problem that can best be solved peacefully through a true constitutional form of democracy that diffuses political power in a non-ethnic fashion through constitutional and democratic means to regional and local levels. In particular, it is a problem of absence of representative democracy based on majority rule with the protection of the rights of minorities and individuals.

Several studies show that ethnic diversity and democracy can co-exist in harmony. Ethnic inequality and dominance becomes problematic only under dictatorship. Ethnicity or ethnic nationalism is a symptom, not the root cause of the problem. The root causes include poverty, destitution and lack of democracy based on personal rights (not group or ethnic rights). They also include some hegemonic cultural traits that cut across ethnic groups, but can only change over time with democratization and education. The problem is then how to establish democratic governments. The best way to advance democracy is by developing democratic institutions of governance that protect individual rights which also insures the protection of ethnic and other group rights. The reverse is not true. Protection of ethnic group rights does not ensure the protection of the rights of individuals in that group under dictatorships. Such conditions are likely to lead to mini (ethnic) dictatorships that promote inter-ethnic intra-ethnic conflicts.

The sooner the states of the Horn reform politically by peacefully and democratically re-constituting themselves, the better things will become for all the peoples of the Horn of Africa. Ethiopia must take the lead in this regard as the most populated country with almost all the linguistic/ethnic groups in its current territory, including the Somalis. For example, the six million Ethiopian Somalis are the third largest ethnic group following the

Oromo and the Amhara. For example, the Oromo nationalist problem is also a basic democratic problem. The Oromo are the trunk of the greater Ethiopian state. The secession of Oromia from the rest of Ethiopia will end the modern state of Ethiopia. If the Oromos are the majority of the Ethiopian state, why would a majority want to secede? The fact is, Modern Ethiopia is not ancient Abyssinia, and the Oromo people have interacted and intermingled with other peoples of the Country for generations and have taken a crucial role in the formation of the modern Ethiopian state.

The historic formation of any nation state is neither smooth nor just. The Ethiopian state is not unique in this regard. Ethiopian political elites must stop fighting amongst themselves over history, and instead focus on present and future problems by advancing the causes of secularism and true constitutional democracy with a majority rule, with proper checks and balances and the rule of law that protects the rights of minorities and individuals. The sooner politicians strive for these goals, the more likely it will become for sustainable political reconciliation, peace and development to be possible in Ethiopia. Moreover, the recent history of the Horn region shows that secessionism not only leads to fragmentation, war, and arbitrary rule, but it has a toxic and detrimental effect on the welfare of the people involved themselves. An example of this is the state of Eritrea, which broke away from Ethiopia in 1993 primarily as a result of arbitrary and reckless use of power by former dictator Colonel Mengistu of Ethiopia, 1974-91. The Eritrean movement was a minor insurgency that was mostly contained and carefully managed during the pre-1974 period.

One of the recent major threats to Ethiopia and the Horn Region is a group known as the Al Ithaad al Islam (Unity of Islam). The group was reportedly founded in the early 1990s by a group of Somali fundamentalists who fought against the Soviet Union in the 1980s, and financed by a mysterious network of Islamic charities (Shinn, 2002).

For example, Al Ithaad claimed responsibility for the bombings of two hotels in Ethiopia in 1996, and for the assassination of an Ethiopian general, as well as an assassination attempt against



Ethiopia's Ambassador to the United Nations.

Another terrorist incident that took place earlier was an assassination attempt against President Mubarak of Egypt as he was going from the airport to attend the Organization of African Unity (OAU) summit meeting on June 26, 1995. Later evidence showed that Egyptian terrorist groups with operatives in the Sudan were responsible, and that three of the terrorists escaped to the Sudan after the unsuccessful assassination attempt. That incident forced Ethiopia to terminate relationship with the Sudan at the time (Shinn, 2002). However, the relations between the two governments are now fully normalized, following the Ethio-Eritrean War of 1998-2000.

The Horn of Africa now needs an institutional framework agreed upon by the current states, aimed at the crucial areas of conflict resolution and regional security against terrorist threats. Indeed, it is impossible to bring about a sustainable (political) or even economic cooperation in the Horn of Africa as things currently stand. The best that can be done under current realities is to strengthen the conflict resolution efforts of the existing regional institutions such as IGAD, including an ability to impose collective sanctions to enforce agreed upon rules. IGAD must have the capability to sanction and isolate rogue states of the Region that use arbitrary power to commit massive atrocities and human rights abuses on their peoples and violate

principles of inter-state and intra-state co-existence that benefit the peoples of the Horn of Africa.

For a viable political confederation to take place in the long run, some minimum conditions need to be met. First, individual states of the Horn must have their houses in order to move toward democratization by taking credible political and economic reforms before they can form political and economic integration along democratic lines at the domestic level. For example, the Sudan must remove religion (Political Islam) from governance and give a true autonomy to its Southern Region and peoples. The Government of Sudan has already signed a peace agreement with the Sudanese People's Liberation Army (SPLA) and must bring about peace with the Darfur and other rebels in the country. Eritrea under its current ruler has unfortunately emerged to be the most de-stabilizing state in the Horn. For example, Isayas, Eritrea's president has clashed with almost every country of the Region. Isayas suddenly invaded Ethiopia in 1998. He fought with Yemen in 1996 and with Djibouti, and has picked fights with the Sudan. He has indeed emerged as bully or the "Saddam Hussein of the Horn of Africa". It is impossible to have political confederation with behavior of such leaders. Moreover, the Somalis must work together for the common good and agree to reconcile. In Kenya, a democratic transition based on free and successful elections ended 24-rule of former President Moi, which also ended the rule of the Kenya African Union (KANU) that led the country to Independence under founding President Jomo Kenyatta. Moi's 24-year rule ended due to constitutional term limit which ended his rule in 2004. Uganda and Kenya have both placed such term limits on their top political leaders in their constitutions. Indeed, the list of African countries that have reformed their constitutions and undergone peaceful political transition during the post-Cold War period is growing. It now includes Ghana, Nigeria, South Africa, Tanzania, and Zambia. This is both positive and necessary for Africa. The other Horn of Africa states such as Ethiopia and Eritrea are still behind in this regard. They must begin an important democratic process of peaceful political transition and reconciliation.

Ethiopia should also undergo similar constitutional reforms. It should take ethnic or tribal politics out of governance in a peaceful and orderly manner. It should allow for peaceful and democratic transition of power based on constitutional term limits on key political offices. Ethiopia should also reform its ethnic based federalism built in its constitution to avoid inter-ethnic and intra-ethnic conflicts with a potential to balkanize the country, and to de-stabilize the entire region. It should also reform its existing rural land policy with the aim of reducing tenure insecurity by vesting land rights on farmers and farm communities. Land reform is critical to bring about sustained agricultural development and the reduction of poverty and land or soil degradation.

Challenges and Prospects for Economic Integration in the Region: Toward a Horn of Africa Free Trade Area (HAFTA)

The Nigerian economist Professor Adedeji, who is a leading proponent of economic integration in Africa, has recently stated the critical the need to have dynamic economies at the domestic level before a viable regional confederation and economic cooperation is possible as follows:

"First you must have a dynamic (democratic) state. If you have a stagnant, contracting state, forget about regional integration. When a state finds itself in a crisis and in conflict,, it does not see beyond its nose. If you can't provide enough transport facilities at home, how can you be thinking of regional or pan-African transport facilities? There are African states that can't even pay the salaries of their civil servants. How can you expect them...to contribute to regional organizations? If you look at the 1950s to 1970s, the European economies were moving fast, expanding. Therefore, the environment for regional integration was there. That is what has been absent in Africa. We do not have an enabling environment for integration and cooperation, because we have stagnant or declining economies" (Adedeji, A. Africa Recovery, 2002).

The current reality is that in spite of the potential in natural resources and its geopolitically strategic role, the Horn of Africa is

one of the poorest regions of the World. The key economic and social indicators of the states of the region clearly point to these realities (see table A1). The primary cause of poverty in the midst of such natural resource potential is bad governance and dictatorships that produce conflicts, wars, and bad economic policies.

There has been a ‘collective failure’ (among the political elites of the region) that has prevented the peaceful evolution of viable democratic institutions of governance and conflict resolution. While it is true that politics and economics cannot always be separated, it is possible for states of the sub-region to move forward in the area of economic cooperation with some effort and enlightened leadership based on serious internal economic reforms followed by political reforms.

This paper proposes such a move forward to begin at the lowest level of economic integration possible or at the level of free trade area. A free trade area has a potential win-win outcome for the peoples and states of the Horn of Africa. The rationale for the proposed free trade area is based on standard economic arguments of trade and economic integration, which include benefits gained from economies of scale and comparative advantage as well as access to greater markets. For example, Ethiopia and Djibouti currently enjoy mutually beneficial economic cooperation. Ethiopia gets access to the port of Djibouti via a jointly owned railroad, and Djibouti benefits from revenues generated from Ethiopia’s use of the port. Another motivating factor for economic cooperation is the existence of roads that connect many of the states of the Region (and on which states might want to build). A free trade area can also benefit from the existing initiative of IGAD established by the states and supported by international development institutions, donors, and other partners. Indeed, for a successful interregional trade to be viable, it must be complemented by public and private investment. Domestic and foreign private investment is especially crucial to maximize the benefits from a free trade area. Moreover, there is some diversity among the states of the greater Horn if Kenya, Uganda, and Sudan are included, with some complementarity for a viable inter-re-

gional trade for the benefit of Region (see table A2). A narrowly defined “Horn of Africa” free trade area that excludes Kenya, Uganda, and Sudan may not have much inter-regional trade benefits and complementarity. For example, Ethiopia is potentially rich in agricultural and livestock products. The country has revealed comparative advantage in such products (see table A3). The Sudan has discovered petroleum in its Southern Regions, and there are natural gas potentials in Somalia. Kenya has the most developed manufacturing base from which it can benefit. It is a major source of inter-regional trade with Ethiopia for example (table A3). Uganda is emerging as a potential “African Tiger”, as it is currently implementing one of the most successful economic reform programs in Africa. Uganda, which at independence from Britain in 1962 was called the “Jewel of Africa” due to its rich soil and natural resources, went through political instability that produced eight governments between 1962-86, which included the vicious rule of former dictator Idi Amin, 1971-79. Since 1986 Uganda is experiencing a relative stability, which appears to be turning into an economic advantage. The Government and international donors have begun to rebuild Uganda’s devastated economy from years of civil war and political instability.

Indeed, an aggressive reform aimed at trade liberalization, privatization, fiscal and monetary discipline has been launched, allowing Uganda to achieve an average GDP growth rate of over 7 percent through the 1990s, the level required to reach the global Millennium Development Goals by 2015 for Africa. The Global Millennium Development Goals include: 1. The reduction of poverty and hunger by half, 2. The achievement of universal primary education, 3. The promotion of gender equality, and 4. The reduction of maternal mortality rates by $\frac{3}{4}$. A UN Millennium Declaration adopted these goals in 2000, when it declared “the central challenge we face to day is to ensure that globalization becomes a positive force for the entire world’s people” (Asefa & Reinert, 2004).

Ethiopia is the largest country in the Horn of Africa in terms of population, and second most populated state in Africa after Nigeria. It is a multi-ethnic nation that constitutes 40 per-

cent of the population of the Horn. It is also the current home of important pan-African organizations such as the African Union (AU) and the United Nations Economic Commission for Africa (UNECA). Ethiopia can serve as anchor on which a free trade, foreign investment, and related regional economic cooperation and development activities can be implemented in the future.

What is suggested here is a movement toward a creation of a Horn of Africa Free Trade Area (HAFTA), a first stage of economic cooperation which can be established independently or within the framework of the existing regional institution such as IGAD (see figure A1). IGAD has gained significant institutional capital and experience since its inception in 1986. Currently, IGAD is organized under and an executive director and three directors of divisions focused on three key areas of development that include: Agriculture & Environment Division, Economic Cooperation Division, Political and Humanitarian Division. The organizational framework includes an important Conflict Prevention, Management & Resolution section under the Director of Political and Humanitarian division. (See IGAD 2002 for its complete organizational chart.)

The proposed free trade area can be developed within the existing IGAD framework of Economic Cooperation Division further in consultation with all states of the Horn, pan-Africa organizations, Donors, other International Development partners, and other stakeholders. The idea should follow a series of inclusive international and regional workshops aimed at fully working out the details. It should also be noted that the Organization has a Trade, Industry & Tourism Section that can be further strengthened and re-focused to promote trade and investment. The suggested free trade area should be regarded as the first of stage toward an economic union of the Region in the long run. It will have to be followed by increasingly higher levels of economic integration schemes, such as common market and customs union before a full economic union is possible. In general, four degrees of formal economic integration schemes, from the lowest to the highest level, can be identified. They include: Free Trade Agreement, Customs

Union, Common Market, and an Economic Union.

Each of the stages that lead to full regional economic union must evolve and they may take several years. It should be remembered that it took European countries over 50 years to reach their current final stage of economic union of Europe or the Economic Union (EU) with the common currency, coordinated or harmonized macroeconomic policies, standards, and regulations. HAFTA can begin as an open free trade association with access by individual member states to the existing regional economic cooperation initiatives such as Common Market for Eastern and Southern Africa (COMESA) and the Nile Basin Initiative (NBI). Indeed, HAFTA/IGAD will have to coordinate activities with the existing overlapping regional initiatives in order to avoid duplication of programs. Currently, all the Horn states are members of at least three African regional schemes: COMESA, NBI, and IGAD. In addition Kenya and Uganda belong to East African Cooperation (ECA). See figure A1.

“Ethiopia can serve as anchor on which a free trade, foreign investment, and related regional economic cooperation and development activities can be implemented in the future.”

Another critical area of cooperation within the proposed IGAD/HAFTA framework is the promotion of “regional public goods” and the eradication of “regional public bads.”

“Regional public goods” refer to regional cooperative activities that improve inter-state and intra-state physical infrastructure such as roads and communication schemes, as well as cooperation in the areas of education, research and public health and related social infrastructure, water use for needed irrigation. “Regional Public bads” are

the opposite of “regional public goods.” They include regional drug trafficking, the spread of infectious diseases such as Malaria and HIV/AIDS, and regional terrorism that can be combated through a regional cooperation among the states.

Regional Efforts and Initiatives in Conflict Resolution and Peace Building

There are current efforts in conflict resolution and peace building in the Region that may enable the suggested economic cooperation to be possible. Generally, there appears to be some encouraging initiatives in conflict resolution within and among some of the states of the Region. Djibouti signed a peace pact in May 2001 with the last armed opposition against the government (World Bank, 2002). The Somalis appear to be making some progress in peace negotiations. The political reconciliation talks among the Somali factions, originally scheduled in April 2002, have just been concluded on a positive note. The Somalis have adopted “a declaration on Cessation of Hostilities and the Structures and Principles of the Somali National Reconciliation Process” at their recent meeting in Kenya on October 27, 2002, under the sponsorship of IGAD. The Sudan has signed a successful Peace Agreement with the SPLA in 2005, ending a long war that has claimed 2 million people. The United States played a constructive role when the U.S. President Bush signed the Sudan Peace Act to give the Agreement some “teeth.” The legislation is aimed at putting a sanction on the Government of Sudan if it does not negotiate in good faith with the SPLA and the other rebels. During the signing ceremony on October 21, 2002, Mr. Bush stated, “The Government of Sudan must choose between the path of peace and the path of continued war and destruction”.

Although the Government of Sudan has complained about this legislation, noting that it will not give any incentives for the rebels to sustain the peace agreement (Prolog, 10/22/2002), a successful peace was signed with efforts of US Government. On the other hand, current President Isayas of Eritrea is continuing to pick fights with the other states of the Horn that he began soon

after creation this Country in 1993. Recently, he accused Sudan, Ethiopia and Yemen of forming an alliance “to topple his regime” (Arabic News.com, 20/28/02). The Ethio-Eritrean party is at stalemate.

The Horn of Africa and Global War Against Terrorism after September 11, 2001

The September 11 2001 terrorist attack on the United States is likely to raise the strategic value of the Horn of Africa to the level of the Cold War period, this time due to the global war against terrorism led by the United States. David Shinn has speculated that the Horn of Africa may be the next target of a global anti-terrorist campaign, noting that there are Islamic groups in Somalia with ties to Osama bin Laden and his al Qaeda organization, and that bin Laden himself lived in the Sudan until he was asked to leave in 1996. In a recent article, Shinn expressed this concern as follows:

“The (terrorist) concern from the Sudan has, at least for the time being dissipated. On the other hand, the events of September 11, 2001, have caused Ethiopia to focus on the situation in Somalia, particularly the threat posed by hostile groups such as Al Itbaad (Unity of Islam). Ethiopia is the linchpin of the Horn of Africa. What happens there impacts the rest of the region. The importance of Islam in Ethiopia is not well appreciated by the United States, and U.S officials are well advised to pay attention to Ethiopian Islam and the way in which Ethiopia interacts with its Islamic neighbors” (Horn of Africa News Agency, 2002).

Moreover, it should be noted that Islam is a major and a growing religion in Ethiopia. A survey of Islamic populations around the world conducted by San Diego State University estimates the number of Ethiopian Muslims to be about 29 million, and that Ethiopia is tied with Morocco as the country with 11th largest Muslim population in the world. If accurate, these estimates show that there are more Muslims in Ethiopia than in Saudi Arabia, Sudan, Iraq, and Afghanistan. Ethiopia’s current population is probably about 45 percent Ethiopian Orthodox Christian, 45 percent Sunni Muslim, and the rest Protestant or indigenous religions (Shinn, 2002). As indicated earlier, Muslims and Christians have co-existed in Ethiopia in a

relative harmony and peace for generations. There is no reason to believe that this will not continue in the future, short of politicization of the religions, and political and economic reform toward freedom and democratization, and reduction in poverty.

The U.S. is now sending additional forces of 800 troops to the Horn of Africa (IRIN News. Org, 2002). These forces are being placed in Djibouti to fight against terrorism. The United States also has security agreements with the other Horn states of Kenya, Ethiopia, and Eritrea as well as Yemen. As the only world super-power, the U.S. shoulders the huge responsibility not only to defend itself but also other nations against international terrorism, and to lead a global coalition against this new threat to human freedom, peace, and development.

However, it is important for the United States to work with the international community of nations, including the states in the Horn of Africa. In the Horn of Africa, the United States should coordinate such efforts of peace building and conflict resolution efforts with development, democratization, and poverty alleviation. In the long run, the United States should commit resources to IGAD and strengthen its autonomy and institutional capability for building sustainable peace and development and for fighting poverty in the Region. The US government should avoid taking sides in the regional conflicts and promote reconciliation within and among the states of the Region. It should take a long-term view and assist those states that make significant progress in reducing poverty and conflict, and in advancing the civil and human rights of their citizens. The United States should also commit resources to help re-build the economies of the region. The current Bush Administration and future US administrations should take a non-partisan approach and build on the Greater Horn of Africa Initiative, initiated during the Clinton Administration, with a dual approach: To help the countries to achieve food security to support their people, and to resolve conflicts in a peaceful and democratic fashion (Shinn, 2002). The global war against terrorism should move along a two-step process: In the short-run, the US and the World community should sustain multilateral efforts to dismantle terrorists, with a focus on

destroying their financial infrastructure in particular. In the long run, the US and the international community should engage in a global war against poverty and injustice wherever it exists. The long run strategy for winning the war against global terror is best described by Nobel Laureate economist Joseph Stiglitz in his recent article, as follows:

“September 11, 2001 has resulted in a global alliance against terrorism. What is needed is not just an alliance against evil, but also an alliance for something positive- a global alliance for reducing poverty and for creating a better environment, and alliance for creating a global society with greater social justice” (Stiglitz, 2002) Concluding Remarks.

The prospects for economic cooperation, peace and development in the Horn of Africa may appear gloomy. Indeed there have been mixed views among scholars about the prospects or the merit for economic cooperation. For example, one view that strongly opposes any move toward cooperation among two the states of the Horn is as follows: “Confederation of Eritrea with Ethiopia will give the (Eritrean) state a free hand to plunder Ethiopian resources as happened during 1991-98 or before the war...and that Confederation will give (Eritrean political elites) a second chance.... The war was, in a way, an opportune moment for Ethiopia to get rid of a region that sucked her resources for over 40 years with no reverse benefits” (Teketel, 2002). Regardless of one’s assessment of the merit this view, it assumes that the state of Ethiopia, with over 70 million people, will not be able to defend its national interest against an Eritrean state of less than 4 million people from which it allowed to break peacefully away in 1993.

It also implies the state of Ethiopia will not be capable of re-constituting itself into a democratic and dynamic economy capable of promoting its national interests and will therefore be unable to benefit from fair trade and regional economic cooperation in the future. Such assumptions are not tenable. Any way, these are challenges for the current and future generations of Ethiopians. Nevertheless, if one takes a more optimistic and dynamic view of the Horn of Africa, there may be some ground for cautious op-

timism, as well as new challenges in the Region.

The peoples and the states of the Horn may have an opportunity to begin the long road toward peaceful co-existence, intra and interstate political reconciliation and peace building, that may lead to cooperation aimed at sustainable development. However, before any viable Horn of Africa Confederation is possible among the states of the Region, they must put their internal political and economic house in order by making credible political and economic reforms along democratic lines. The States of the Horn must go through a necessary stage of peaceful and just political re-conciliation among and within themselves and their societies. To initiate any form of political confederation driven from the top with leaders that are undemocratic or do not have legitimacy among the majority of their respective peoples at this point will be pre-mature and unsustainable. It will be like putting the cart before the horse, or like expecting a child to run before he or she can sit, stand, crawl and walk.

Specifically, the following four broad policy areas are crucial to build dynamic economies in the Horn of Africa required for a future viable economic cooperation in the Horn of Africa: 1. Improving institutions of governance and conflict management, 2. Investing on people (i.e. on education, health, and combating HIV/AIDS pandemic), 3. Diversifying exports and enhancing global competitiveness, and 4. Fostering partnerships, and reducing debt and dependency on foreign aid. These are all related areas that complement each other (see figure A2). If vigorously pursued and properly implemented, they are likely to lead to an equitable growth necessary to reduce poverty and to reach the other components of Millennium Global Development Goals by 2015.

It is important to realize that the process of human and economic development through cooperation is an evolutionary process of 'learning by doing.' The peoples and states concerned must first learn to live and work together, take correct lessons from their history and cultures, and build sustainable democratic institutions that make cooperation and development possible. By sustainable democratic institutions here is meant the rules

of economic and political development or maturity, and cooperation, rooted in culture or tradition, based on peaceful compromise and dialogue among diverse interest groups aimed at building trust and institutions that constrain arbitrary and destructive use of power by individuals and organizations through checks and balances. Building sustainable development institutions also involves economies and societies to: 1. Complement what exists-in terms of other supporting institutions, human capabilities, and available technologies, 2. Innovate to design institutions that work-and drop those that do not based on experiences, 3. Connect people and communities for markets through open trade and information flows, and 4. Promote competition among jurisdictions, firms, and individuals (IBRD, 2002). These include both formal and informal institutions. Formal institutions are rules written into law and codified or adopted by private and public institutions operating under public law with checks and balances (Ibid). Informal institutions are those that operate outside the formal legal system. They are unwritten codes of social conduct and behavior that evolve over time. Informal institutions are critical to consider in designing formal institutions and policies that work.

For developing societies and economies, institutions of government and markets are critical. Governments have important role in providing public goods and services, such as laws that clearly define property rights for markets to develop and work, and the judicial institutions that protect and fairly enforce these rights and the rule of law. Governments can also impede the development of market institutions through arbitrary exercise of state power, in the form of over taxation, corruption, short time horizons, cronyism, and the inability to uphold public order and to protect human rights and security. Indeed, it is in this regard that the states of the Horn of Africa have failed to a various degree.

Thus, one of the challenges in development and poverty reduction in the Horn of Africa is how to frame or create good governance that is capable and effective in the creation, protection, and enforcement of property rights critical to enhance markets and opportunities for people.

The challenge in framing good governance also lies in creating a state that both controls itself and the (destructive) behavior of citizens, and directs it toward constructive tasks for the benefit of society. The challenge is to design incentive-compatible institutions with internal enforcement mechanisms that allow people to “to invest on efficient technology, increase their skills, and organize efficient markets. Such incentives are embodied in (market) institutions” (IBRD, 2002).

However, while institutions determine how society and individuals take advantage of opportunities and markets for human development and welfare, they can also be the primary cause of economic failures such as hunger, poverty, war, and unemployment by providing rational people or actors with incentives to behave in a destructive rather than a constructive manner. Indeed, rationality does not mean people always do “good” things. It simply means that people do not intentionally do things that adversely affect their own well being or it means that people select the best option that they expect may lead to a result that meets their goal before the fact. This is the basic idea termed as rational expectations in the economists jargon.

In general, this process of building democratic institutions and trust is crucial for sustainable development for all viable societies and economies. It is an evolutionary process that takes time. But the peoples and the states of the Horn of Africa, in spite of the painful experiences of the recent past, can learn from their own history and tradition of co-existence, as well as from other societies and regions that have succeeded in this regard. Ethiopia and the Horn of Africa are facing another cycle of famine, which is estimated to be more serious than the last famine of 1984/85. While drought and lack of rains is a significant factor, poverty due to the failure or the absence of democratic institutions required to transforming the Country’s economy in general and that of agriculture in particular is the most crucial factor. Such poverty reducing institutions must provide an enabling environment for massive injection of capital and private and public investment into Ethiopian agriculture in particular, in the area of improved technology, irrigation, and agricultural

research and extension. Moreover, the removal of institutions that retard the mobility of labor and capital such as ethnic based regionalism, and the need to carry out a land reform that enhances security of tenure vested in farmers, and that enable massive private investment in agriculture are among the most significant elements for reducing poverty conquering hunger and famine in the long run.

What has been suggested in this paper is a modest and reasonable way to begin a long road toward economic cooperation, peace-building, and development based on trust that may bring about a win-win outcome for the peoples and states of the Horn. Skeptics may dismiss this view as naïve and wishful. However, it is worthy of serious consideration and effort. The process of re-building the economies and the societies of the Horn of Africa for future generations should not wait. It must begin now!

Notes

Adedeji, A. 2002. “You must first set your house in Order”, *Africa Recovery*, September, 2002. The United Nations. New York.

Asefa, S. and A. Lemi, 2002. *Challenges of African Integration and Development in the Global and Information Economy*, Unpublished manuscript, CADPR, Western Michigan University.

Asefa, S. and K Reinert, (forthcoming). *Development Concepts, Windows on the World Economy* Southwestern Thomson Publishers.

Gerber, James.1999. *International Economics*, Addison-Wesley Longman, Inc. MA

Henock, T. 2002. *Green light for confederating the Horn of Africa*, www.ethiopiafirst.com/news2002/oct.

Henze, P. 2001. *Eritrea’s War*, Shama Books, Addis Ababa, Ethiopia.

IGAD-Intergovernmental Authority on Development, 2002. *History, Objectives, Profile of IGAD*, www.igad.org/about.

Markakis, J. 1996. *The Horn of Africa, Review of African Political Economy* U.K.

Messay, K. 2002. Confederation of the Horn: A Poisonous Idea, www.addistribune.com/archives/2002/10/11-02/confederation.html.

Prolog.2002. Bush Signs Sudan Sanctions Bill. www.ptd.net.net/webnews.

Shinn, D. 2002. Ethiopia: Coping with Islamic Fundamentalism Before and After September 11, Horn of Africa News Agency.

Stiglitz, J. 2002. Globalization and Its Discontents. W. W. Norton Publishers, New York.

Stiglitz, J. 2002. Globalism's Discontents, American Prospect, January 14, 2002.

Sudan Politics.2002. Machakos Negotiations deal with sharing authorities; Eritrea Regional Accusations, www.arabicnews.com.

Teketel, H.M. 2002. Confederation With Eritrea? www.addistribune.com/archives/2002/10/11-02/confederation.html.

Tekle, A. 1996. International Relations in the Horn of Africa, 1991-96.

Review of African Political Economy, Vol.23, no.7, 1996, UK.

United Nations Office for the Coordination of Humanitarian Affairs, 2002. Horn of Africa: US Admits Sending More Troops, IRINnews.org.

Van Den Berg, Hendrik.2001. Economic Growth and Development, McGraw-Hill- Irwin, NY.
World Bank. 2002. Building Institutions for Markets, Oxford University Press, 2002.

World Bank Group. 2002 The World Bank Group Countries, www.worldbank.org/afr.

World Bank, 2002. African Regional Integration Arrangements, www.jomodesign.com/worldbank.

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STRENGTHENING EFFORTS TO ELIMINATE CORRUPTION IN AFRICA

TAGBO AGBAZUE



Sub-Saharan Africa faces enormous development challenges. As observed by Transparency International, “It is the only region of the world where poverty has increased in the past 25 years and half of the continent’s population of 840 million people lives on less than 1 USD per day. Thirty-two of the world’s 38 highly indebted poor countries (HIPC) are in Africa.”¹ Challenges facing the continent include corruption, protracted armed conflict, the HIV/AIDS pandemic and declining terms of trade for non-mineral primary products.

Corruption is definitely not unique to Africa alone. It prevails globally in one form or another in practically all countries and regions. However, it has become endemic in Africa. Despite recent progress in democracy and human rights in a number of African countries, corruption remains one of the biggest challenges throughout the continent, and continues to exacerbate myriad other problems.

The devastating effects of corruption include capital flight, misuse of grants and aid resources earmarked for development purposes, lack of service delivery, etc., thereby severely

contributing to the development crisis faced by Africa today. According to the Global Programme Against Corruption, “corruption undermines democratic institutions, retards economic development and contributes to government instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law, and creating bureaucratic quagmires whose only reason for existence is the soliciting of bribes. Economic development is stunted because outside direct investment is discouraged and small businesses within the country often find it impossible to overcome the “start-up costs” required because of corruption.”²

Kofi Annan, the UN Secretary-General, supports the aforementioned view and stated the following during the adoption by the General Assembly of the United Nations Convention against Corruption: “Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid.”

The extent of corruption is massive. For instance, Nuhu Ribadu (head of the Nigerian Economic and Financial Crimes Commission [EFCC]) estimates that corruption and mismanagement swallow about 40 percent of Nigeria’s \$20 billion annual oil income. Despite its oil riches, 70 percent of the West African country’s population live below the poverty line because of corruption and economic mismanagement.³

There are many interrelated factors that make Africa such a fertile ground for corruption, including historical, socio-economic and political dynamics. Some of these factors are the unpredictability of political will, economic reliance on the extractive sector and the resource scourge.

These are linked to the politicians' individual quests for power, wealth and prestige, which in turn include complex relationships, alliances, pacts and networks such as aspirations of various private interest groups (e.g. the international community, which seeks stability, equity and stabilization; the elites, who seek political access, the middle class, which seeks self actualization; and the average citizen, who seeks service delivery).

The economies of some countries are still primarily dependent on natural resources and are in many cases dominated by the extractive sector. This proffers a number of opportunities for economic growth as in the case of resource-rich countries. Reliance on natural resources, however, creates a number of vulnerabilities in terms of fuelling corrupt and dubious business practices; it can also cause internal conflict as individuals attempt to control the allocation of resources. Properly managing the revenues from natural resource use to contribute to the long-term sustainability requires that the forces of public and economic governance be converged within a culture of accountability, transparency, responsibility and fairness.

Other factors driving corruption in Africa include the link between economic and political governance and the exploitation of public office for private benefit. Also noteworthy is the abuse of cultural practices that facilitate corruption. For example, the cultural practice of "shaking hands" or giving token gifts as a courtesy (originally in the form of kola nuts) during meetings presents an opportunity for misuse. This is because there is a tendency for people to take advantage of these cultural practices in terms of gifts to request for bribes.

The culture of disclosure regarding African corporations, generally, is yet to come up to par with international standards. According to the Summary of Progress Report on Corporate Governance in Africa 2005, "the challenge is to convince corporations that disclosure is an asset, rather than a burden, but this impediment will remain for so long as corporations continue to suspect that disclosure of information may be used in a manner perceived as discretionary by the authorities."

Africa's dark history of autocratic and unaccountable government, as well as conflict and

crisis in many parts of the continent, have posed particular challenges to governance and the fight against corruption. Unfortunately, most of the region is particularly characterized by a proliferation of weak governance zones, where governments are unwilling or unable to assume their responsibilities in relation to public administration and protecting human rights. Further, progress is slow even in those countries where the political will to reform exists. There is also the issue of resistance to reform by groups and individuals benefiting from the status quo. In addition, the capacity of civil society organizations to become increasingly active and outspoken in respect to governance and corruption issues requires additional impetus.

"Despite recent progress in democracy and human rights in a number of African countries, corruption remains one of the biggest challenges throughout the continent, and continues to exacerbate myriad other problems."

Further challenges facing reform in Africa include the quality of the regulatory and institutional framework to promote transparency and accountability. Notable in this regard is the capacity for reform and enforcement considering that public services are unevenly provided and of poor quality, and civil servants are often so badly paid that they resort to petty corruption in order to survive. Also, the institutions that are intended to provide checks and balances within the system (including prosecuting systems) are generally under-resourced and lack requisite skills, infrastructure and independence. The appropriateness of global standards to local markets and economic structures is also a point in issue. With regards to the regula-

tory environment, there are lacunas or gaps in the procedural and evidentiary laws of some countries, some of which are out of date and do not accommodate technological advancements (particularly the evidential status and admissibility of computer and other electronically generated documents) that are part of the present day. This links with jurisdiction problems, owing to the digital revolution that has dissolved physical boundaries of countries around the world, thus making those with inadequate cyber crimes or internet related offences vulnerable for the commission of such crimes.

Further, the proliferation of small, medium, and micro enterprises (SMMEs), state-owned enterprises (SOEs), co-operatives and other forms of economic enterprises within the informal sector in many parts of the continent, require significant innovation to mainstream corporate governance. This may be easier said than done considering the lack of incentives for the informal sector to improve their corporate governance standards as well as their capacity to implement reform programs. A further challenge is the lack of shareholder activism/effective ownership in promoting acceptable levels of corporate governance standards within investee companies throughout the various stages of investment processes.⁴

At this point, it is important to sketch the institutional framework promoting transparency in Africa. At an international level, The United Nations Convention Against Corruption (UNCAC) creates the opportunity to develop a global language about corruption and a coherent implementation strategy. A multitude of international anti-corruption agreements exist, however, their implementation has been uneven and only moderately successful. The UNCAC gives the global community the opportunity to address the unevenness, and the only partial success of these agreements and begin establishing an effective set of benchmarks for effective anti-corruption strategies. The Global Programme against Corruption (GPAC) is a catalyst and a resource to help countries effectively implement the provision of the UN Convention against Corruption. The main areas of work of the programme include technical co-operation, international co-ordination, policy development,

and research as well as advocacy and outreach.

The Extractive Industries Transparency Initiative (EITI) was launched at the World Summit on Sustainable Development in Johannesburg, South Africa, in September 2002. The EITI aims to increase transparency in transactions between governments and companies operating in the extractive industries as a way of ensuring that revenues from the extractive industries contribute to sustainable development and poverty deduction. The multi-stakeholder nature of the EITI implementation, however, presents two clear challenges. The first is the natural adherence by each stakeholder group to its own distinct agenda and perspective when engaging on issues surrounding the EITI. The second is the sensitive nature of the issues, around which stakeholders are invited to engage within the forum. The full publication and verification of company payments and government revenues in many cases demands that stakeholders confront issues of systemic corruption, poor governance, poverty and conflict. The implementation of the EITI is therefore not without risks and challenges. As a result, meaningful multi-stakeholder engagement around these risks and challenges is an important element to aid the process of implementation. Over twenty countries have committed to the EITI principles and criteria, in respect of which the majority are African countries.⁵

The Publish What You Pay coalition of over 250 NGOs worldwide calls for the mandatory disclosure of the payments made to all governments for the extraction of natural resources to help citizens of resource-rich developing countries hold their governments accountable for the management of revenues from the oil, gas and mining industries.

The Financial Action Task Force (FATF) is an inter-governmental body (created in 1989) whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is a “policy-making body” that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published recommendations in order to meet this objective. However, there are concerns that, irrespective of the FATF guidelines regarding

politically exposed persons (PEP), funds siphoned from Africa as a result of grand corruption are still being laundered through financial centres abroad.

Closely linked to the FATF is the Organization for Economic Co-operation and Development (OECD), which plays a prominent role in fostering good governance in the public service and corporate activity. The OECD comprehensively updated its Principles of Corporate Governance in 2004, and these principles continue to form the basis for a number of international declarations on corporate governance. Adopted in 1976, the OECD Guidelines for Multi-National Enterprises, are recommendations from governments (30 membership countries + 9 non-membership countries) to companies. The Guidelines are voluntary and are referred to by many companies from OECD, providing voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. Recently, the OECD has offered guidance for multinationals operating in weak governance zones through a new Risk Awareness Tool.

Transparency International (TI) is the global civil society organization that is prolific in the fight against corruption, and brings people together in a powerful worldwide coalition to end the devastating impact of corruption around the world. In its second decade, TI's global network of chapters and contacts also use advocacy campaigns to lobby governments to implement anti-corruption reforms. Since 1995, TI has published an annual index of perception of corruption ordering the countries of the world according to the degree to which their experts perceive corruption exists among public officials and politicians.

The efforts of the Basel Committee on Banking Supervision to revise the standards governing the capital adequacy of internationally active banks culminated in the publication of Basel II. This framework describes a more comprehensive measure and minimum standard for capital adequacy that national supervisory authorities are now working to implement through domestic

rule-making and adoption procedures. It seeks to improve on the existing rules by aligning regulatory capital requirements more closely to the underlying risks that banks face. In addition, Basel II is intended to promote a more forward-looking approach to capital supervision, one that encourages banks to identify the risks they may face, today and in the future, and to develop or improve their ability to manage those risks. As a result, it is intended to be more flexible and better able to evolve with advances in markets and risk management practices.

At a pan-African level, The New Partnership for Africa's Development (NEPAD) is a framework that provides an opportunity for the emancipation of the continent. The African Peer Review Mechanism (APRM) monitors adherence to the principles and objectives of NEPAD in relation to those countries in Africa acceding to NEPAD. This will require participating countries to accelerate their progress towards adopting and implementing specific objectives, standards, criteria and indicators demonstrating sufficient levels of democracy as it influences political, economic, social and corporate governance. Mutual co-operation, mutual learning and the allocation of resources and assistance to strengthen institutions of democracy and human rights will enable this to occur; as will improved budgeting and financial management; stronger opposition to corruption; increased access to social services such as education, health, water and energy; and increased co-operation in mobilizing the necessary institutional infrastructure and processes to attract both domestic and foreign investment. The NEPAD framework deals with corruption as a cross cutting issue in the three thematic areas (democracy and good political governance; socio-economic development; economic and corporate governance) of the APRM.

The APRM, which has to date attracted 23 countries, is a self-monitoring mechanism voluntarily acceded to by member states of the African Union (AU) with the aim of fostering the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated regional and economic integration. These developments are achieved through the sharing of experiences and

the reinforcement of successful practices, including identifying deficiencies and assessing the needs for capacity building of participating countries.

The establishment of the Pan African Consultative Forum on Corporate Governance (PACFCG) was in response to the growing interest in and commitment to economic reform across the continent. The Forum provides a platform for an inclusive and open dialogue between leaders and representatives from the many areas of interest. These include the public and private sectors, multinational corporations, international agencies and institutions, global and local investors, civil society and others committed to the development of Africa. These groups also believe in Africa as an integral constituent in the international policy framework in launching practical corporate governance initiatives at the Pan-African, regional and national levels. The PACFCG has to date held three forums in South Africa (2001), Kenya (2003) and Senegal (2005).

“The prospects for systematic reforms, which could counter corruption, vary considerably among African countries.”

The Business Action Against Corruption (BAAC) is a campaign against corruption launched in Africa, and backed by the G8 Business Action for Africa (BAA) campaign, which was set up at the July 2005 G8 Summit. It is implemented by a working group made up of the African Institute for Corporate Citizenship (AICC) – Africa Corporate Sustainability Forum (ACSF), the Commonwealth Business Council (CBC), the Convention on Business Integrity, Nigeria (CBI), the Human Rights Trust of Southern Africa (SAH-RIT) and the Southern African Forum Against Corruption (SAFAC). The aim of BAAC is to find practical ways of creating effective and sustainable partnerships between business, govern-

ments and civil society organizations in tackling corruption. Noteworthy is that there are numerous organizations and initiatives combating corruption at the national level, including civil society organizations and anti-corruption agencies that are too numerous to mention although some of them will be indicated in the course of this paper.

The prospects for systematic reforms, which could counter corruption, vary considerably among African countries. A summary of recent measures undertaken in Kenya, Malawi, Nigeria, Sierra Leone and Nigeria follows hereunder.

Developments in Kenya having some bearing on the fight against corruption include: The establishment of several tribunals and commissions to hear allegations into past economic crimes by the ministry of justice and constitutional affairs. The Public Officer Ethics Act, passed in May 2003, lays down a code of conduct for public officers, with its main target being wealth declaration, although there have been concerns raised regarding the effectiveness of the legislation in practice. The Centre for Corporate Governance (CCG) has been instrumental in the issue of a number of corporate governance documents for Kenya including The Principles for Corporate Governance in Kenya, and a Sample Code of Best Practice for Corporate Governance; Good Corporate Governance in State-owned Corporations; and Reporting and Disclosure in Corporate Governance for Kenya, etc.

Several bodies established under the Anti-Corruption and Economic Crimes Act passed by Parliament in May 2003 became operational in 2003/2004. These include the Kenya Anti-Corruption Commission, which is the main investigating body for economic crimes in Kenya; Public Complaints Office, established under the same legislation, functions as an Ombudsman's office; Public Service Integrity Programme, which aims to establish an anti-corruption prevention plan within every public institution.

In May 2004, the government launched a multi-sectoral National Anti-Corruption Steering Committee to run a countrywide anti-corruption awareness-raising campaign. The APRM process is underway in Kenya with the CCG appointed as the local technical agency for the cor-

porate governance thematic area. In the course of this work, it has developed questionnaires for the Expert Panel, National Sample Survey and Focus Group Discussion exercises, all of which are expected to comprehensively inform corporate governance and policy responses in Kenya.

In Malawi, The Malawi Leaders' Forum on Building Alliances to Eliminate Corruption is a multi-stakeholder initiative with support from the presidency that involves a series of roundtable discussions facilitated by BAAC Malawi and AICC/ACSF to map out the way forward and develop clear set of outcomes that includes the following measures: The establishment of a business action against corruption task force that includes government, private sector and civil society representatives; The development of a code of conduct for Malawi private sector and state enterprise that is to be endorsed and agreed upon by all management; The set up of an independent ratings system/agency that will assess systemic action of companies, state enterprise and government procurement (potentially using CBI as model); and The move towards a national framework on corruption that integrates government, business and civil society initiatives under one common umbrella.

In the case of Nigeria, the country is struggling to stave off the perception of corruption that has had severe negative consequences on the country, e.g. discouraging numerous would-be investors that has led to a decreased foreign direct investment; economic instability resulting in business failures and unemployment; and loss of much-needed revenue.

Past governments have made attempts to curb corruption through establishing laws such as the National Drug Law Enforcement Agency Act (NDLEA); the Money Laundering Act of 1995; Advance Fee Fraud (otherwise known as "419") and Fraud Related Offences Act of 1995; Failed Banks Act of 1996; Banks and Other Financial Institutions Act of 1991; and the Foreign Exchange Act of 1995.

There has been a high level of focus in the implementation of sound corporate governance especially in the banking and related sectors. The Central Bank (CBN) and Nigerian Deposit Insur-

ance Corporation (NDIC) have been quite effective in regulating this sector and ensuring satisfactory compliance by bank directors with good corporate governance. The country has achieved significant success in public sector initiatives, e.g. a new due process in public procurement as well as a revamped multi-year budgeting process.

The EFCC that was established in 2002 has been active in bringing a number of criminal elements (including several high profile functionaries) to book, towards addressing financial and economic crimes, although there are concerns that the efforts of the agency have been selective and at times politically motivated. The Nigerian Financial Intelligence Unit (NFIU) domiciled within the EFCC (as an autonomous unit) serves as the country's central agency for the collection, analysis and dissemination of information regarding money laundering and the financing of terrorism. Nigeria has recently been taken off the list of non co-operative countries by the FATF.

In demonstrating its political will towards eradicating corruption in Nigeria, the present Nigerian government has strengthened institutions such as the CBN, the NDIC, the NDLEA, the National Agency for Food and Drug Administration (NAFDAC), Securities and Exchange Commission (SEC), the National Insurance Commission (NAICOM), the Independent Corrupt Practices Commission (ICPC), the Nigerian Police, the Customs and Excise, and the Corporate Affairs Commission (CAC). Notably, the Nigerian chapter of the BAAC initiative launched earlier in 2006 with support from the country's major anti-corruption agencies.

The level of corruption, governance and transparency in Sierra Leone is widely acknowledged as a principal factor for the socio-economic decay, poverty and instability in the country, as well as a major factor that led to and fuelled the decade-long civil war. Corruption has proven to be a major stumbling block in the establishment of an effective and modern state in Sierra Leone, and has undermined the State's ability to utilise resources and collect taxes, and thus contributes to the continued violence in the country.

Sierra Leone, which has long been synonymous with conflict diamonds, has improved trans-

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parency in its diamond industry, but still has a long way to go before earnings from the precious stones benefit the country's impoverished citizens.⁶ The country's Gold and Diamond Department (GDD), which values diamonds for export and levies diamond export taxes, has been lauded for functioning with a level of transparency and professionalism unmatched by other institutions in Sierra Leone.

The Campaign for Good Governance (CGG) in Sierra Leone was established to promote good governance and to facilitate and encourage the full and genuine participation of all Sierra Leoneans in the political, social, and economics processes of development in Sierra Leone. Also, the Governance and Anti-corruption (GAC) Assessment in Sierra Leone promotes learning through long-term partnership between the government and civil society. The Assessment serves as an input for the design of a National Governance strategy aimed at improving governance and transparency and improving the quality of public services. The GAC Assessment has been completed and the draft GAC Strategy identifies key areas for reform and proposes specific policy measures. Some of the recommendations offered by the National Anti-Corruption Strategy 2005 (NACS) towards curbing corruption and improving the business environment in Sierra Leone include: Establishing a public complaint mechanism at the customs office to hamper civil servants from soliciting bribes. All reported cases are sought to be recorded and investigated; Oversight of bidding process for public contracts by an independent entity (i.e. one outside of the soliciting Ministry) to prevent any non-merit-based granting of contracts; And thoroughly investigating all accusations of businesspersons unduly influencing public officials.

Corporate governance reform in South Africa has been long established with the formation of the King Committee on Corporate Governance in 1992 under the auspices of the Institute of Directors (IoD). Initially this was a private sector-led initiative that culminated in the release of the first King Report on Corporate Governance in 1994. This has formed the benchmark for many similar initiatives in corporate governance in Africa, certainly within the Commonwealth countries.

The King Committee was re-constituted in August 2001 to undertake a comprehensive review of corporate governance in South Africa which resulted in the second King Report released in 2002 (King II) and provides a significant compilation of corporate governance standards and principles that are not only applicable to South African companies in both the private and public sectors, but has gained recognition globally for its extensive examination of corporate governance standards and practices.

Since the advent of King II in 2002, and its enforcement through various regulatory measures, regulators in South Africa have taken numerous mandatory steps to improve compliance, even though King II is largely based on a voluntary system of conformance (based on the concept of "comply or explain").

Much of the work and developments in the South African economy in the regulatory sphere over the past two years has been focused on reviewing laws and regulations necessary to ensure that the South African regulatory environment is operating in accordance with international best practices and conventions with the pivotal influence of King II in the following developments:

The Johannesburg Stock Exchange's (JSE) listing rules have been comprehensively updated to incorporate certain elements of King II as mandatory requirements for companies quoted on the JSE (with no exception made for local or foreign incorporated companies).

The banking regulator has introduced rigorous provisions around director accountability in amendments to the South African Banks Act, which reflect a number of the principles enshrined in King II.

Other areas of the financial markets in South Africa have also been subject to new laws and/or regulations introducing strong governance measures, particularly in the sectors dealing with short and long term insurance and collective investment schemes.

The Insider Trading Act and other important financial markets legislation, such as that regulating the JSE, has been consolidated as the Securities Services Act (SSA) and enhanced with stronger provisions of enforcement and sanction.

Accompanying all of these developments has been the introduction of other essential legislation governing whistle blowing, anti-corruption measures (which has extraterritorial implications), money laundering and anti-terrorism measures, and priority amendments to the existing Companies Act calling for mandatory audit committees in “public interest” companies and giving legal force to accounting standards and reporting. Embracing this is the country’s commitment to ensuring full adherence to Basel II and International Financial Reporting Standards (IFRS) ahead of many countries in Western Europe.

A major response to these developments has been the surge in director development and corporate governance training, led by the IoD in South Africa primarily, and has evolved into a major industry of itself through the activities of private consultants, large auditing and accounting firms, higher education institutions and business schools, etc.

South Africa has recently embarked on the NEPAD APRM review, using an extensive consultative process that officially covered as many as five million people. The country has produced a detailed Technical Report and Country Self Assessment Reports in the four thematic areas of the APRM with positive programme of action deliverable towards improving the level of integrity in the country.

In conclusion, corruption is a key issue that needs to be addressed in Africa as the region’s long-term growth and competitiveness requires an environment underpinned by the cardinal pillars of accountability, fairness, responsibility and transparency that have been lacking in many parts of the region. Leverage points for reform in sub-Saharan Africa include:

- The opportunity created by the NEPAD process and peer reviews in engaging issues of public policy and economic management.
- The need for policy review and effective enforcement of the legal and regulatory framework.
- The power of the banking system. As banks play such a pivotal role in the economy, banks should adopt and implement practices of good corporate governance to enable them to play a leadership

role in promoting good corporate governance. In order to prepare for Basel II banking guidelines, it would be necessary to undertake studies to identify gaps and develop a time profile for implementation (understanding the prior need for full application of the Basel I requirements).

- The need to encourage countries in Africa to put in place mechanisms that will ensure that directors appointed are qualified, competent and independent and that they are properly inducted into their roles and regularly trained.
- The role of the State as trustee shareholder and regulator. This role must be acknowledged, and SOEs need to adopt guidelines for good corporate governance compatible with international standards. However, these guidelines should take into consideration local circumstances without compromising on the fundamental principles of accountability, transparency, efficiency and effectiveness, and probity.
- Enlightenment of existing and prospective shareholders of their rights, duties and obligations. This is imperative to encourage participation in the formal private sector and to further advance the monitoring of companies and good corporate governance practices. This can involve training, workshops, school and university initiatives, and more active exercise of responsibilities by investment managers and pension funds. Develop more effective linkages for communication of corporate governance practices, standards and developments, including sharing of experiences, to ensure that corporate governance remains at the forefront of policy priorities.
- The promotion of shareholder activism. This is imperative and could be through public policy interventions and regulatory mechanisms to enable the ability of shareholders to more effectively exercise and enforce their rights.

What is interesting is that the solutions required to eradicate corruption are too complex and the resources too thinly spread across the various sec-

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tors for any particular sector to do it alone. What is required is multi-stakeholder action and building the capacity of civil society organizations to engage with and hold both government and business accountable. In addition, International donors and developmental agencies should strengthen their efforts to engage in the fight to eliminate corruption within their programs and spheres of influence and to the extent possible promote the role of responsible multi-national corporations.

Notes

1 Transparency International, "Sub-Sahara Africa," www.transparency.org, (accessed April 9, 2006).

2 United Nations Office on Drugs and Crime, "The Global Programme against Corruption," www.unodc.org, (accessed April 9, 2006).

3 Reuters, "Corruption cost Nigeria 40 percent of oil wealth," www.boston.com, December 14, 2004.

4 Due diligence, negotiation, investment, monitoring and exit stages.

5 Fourteen African countries have committed to the EITI: Angola, Cameroon, Chad, DRC, Republic of Congo, Equatorial Guinea, Gabon, Ghana, Guinea, Mauritania, Niger, Nigeria, Sao Tome and Principe and Sierra Leone.

6 According to the Diamond Industry Annual Review Report for Sierra Leone 2005, produced by the Ottawa based Partnership Africa Canada (which has undertaken regular research on diamond mining in Sierra Leone) and the Freetown based Network Movement for Justice and Development.

7 Transparency International, "Sub-Sahara Africa," www.transparency.org, (accessed April 9, 2006).

Global Programme Against Corruption. See <http://www.unodc.org/unodc/en/corruption.html> (accessed on 04/09/2006).

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ASSESSING LIBERIA'S POST WAR RECOVERY WITHIN THE THEORETICAL FRAMEWORK OF THE PHOENIX FACTOR

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Social Scientists have discovered that after wars, defeated parties are able to eventually catch up with winners, with the social order returning to the status quo antebellum in a relatively short time - usually 15 to 20 years. International relations scholars refer to this condition as the phoenix factor, and it is a phenomenon that has so far been empirically proven in many inter-state wars. In this paper, I will attempt to apply the concept to the study of postwar recovery in Liberia.

In their research entitled "The Cost of Major Wars: The Phoenix Factor," Organski and Kugler examine how war torn societies recover from their defeat. The study looks at shifts of power among winners, losers and neutrals; and discovers that while winners and neutrals are marginally hurt by war, the power and resources of losers are at first eroded, but in the long run, the effect of the loss disappears, and losers accelerate their recovery and soon resume their antebellum status. The authors refer to the phenomenon as the phoenix factor.¹

Students of war do not exactly know why the phenomenon occurs. In their attempt to explain the trend, Organski and Kugler indicate that structural and attitudinal factors play a role. Favorable occupational distributions can help accelerate the rate of recovery, as can the destruction of old and inefficient industrial plants. A defeated but economically dynamic population living in the midst of ruins will recall its prewar standard of living and rebuild to get back to that standard. More importantly, a defeated population would more likely exert a greater effort to recover than the population of a victorious country. The latter is more likely to be focused on relishing the spoils of victory. The motivation for work and sacrifice is common to the populations of a de-

feated society. There were, for example, relatively fewer strikes in Germany and Italy at the end of World War II than in England and France.

Strongly refuted by international relations scholars is the assumption that losers rise from the ashes because winners provide them with foreign aid. If this were the case, critics argue, then losers would never be able to rise up and catch up with winners. Using data on U.S. foreign aid in the years immediately following the end of World War II, Organski and Kugler attempt to compare aid amounts given by the United States with the growth rates of the aid recipient nations. Amazingly, they find that foreign aid and growth rates are independent of each other. If there is any relationship at all between the two, the relationship is likely to be negative. The countries that received the most aid for the longest period appeared to perform worst. For example, Britain received much more aid than France; France received much more than Italy; and Germany much more than Japan.² Yet, it was Japan, the most devastated nation in World War II, which enjoyed the fastest rate of postwar recovery, followed by Germany, Italy, and France. Britain was last. This tells us that there is either little or no positive link between foreign aid and economic growth.³ As an engine for sustainable growth, foreign aid appears to be ineffective. What are effective are the internal resources, particularly the human capital and the level of development that existed prior to the outbreak of war. In other words, previous patterns of performance are far more significant in setting the pace of postwar recovery than foreign aid.⁴

That a party that has been defeated in war can, in a comparatively short period of time, recover and catch up with the winner sounds rather

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unbelievable, if not surreal. Yet it is a phenomenon that has held true cross-nationally over time. While international relations scholars cannot fully explain the phenomenon, they have gathered enough empirical evidence - as many as 32 cases in all - to support their claims.⁵ The time required for the impact of the loss to dissipate and the defeated party to regain its prewar status is usually estimated at 15 to 20 years.

For some countries, it is even shorter. As early as 1992, Kuwait, whose economy was devastated by the 1990 Iraqi invasion, was already back to its prewar level of economic performance. Signs of the Iraqi invasion had disappeared.⁶ And by the mid-1960s, the German economy that was completely destroyed by allied forces in 1945 had recovered to become an economic powerhouse in Europe. Despite the variation, fifteen to twenty years remain the norm. Thus, anyone interested in knowing how a country whose economy has been devastated by war is going to perform in the future should look at the rate at which the economy was performing prior to the onset of the war.

Consolidating Peace and Democratic Reforms in Liberia

Before we determine if the phoenix factor can be applied to understanding postwar reconstruction in Liberia, we must begin by examining Liberia's pre-civil war conditions and determining if the postwar conditions today are stable enough to enable the country's economy to rebuild from the ashes of the civil war. Has Liberia done enough to consolidate its hard-won peace? The end of a civil war and the staging of democratic elections

are not sufficient conditions for rebuilding Liberia. Winning an election is not enough to allay the fears and concerns of the major stakeholders in the Liberian state. The political environment under which peace was negotiated has a greater bearing on stability and lasting peace than any postwar efforts directed at adopting democratic reforms. Has Liberia taken adequate measures to consolidate its

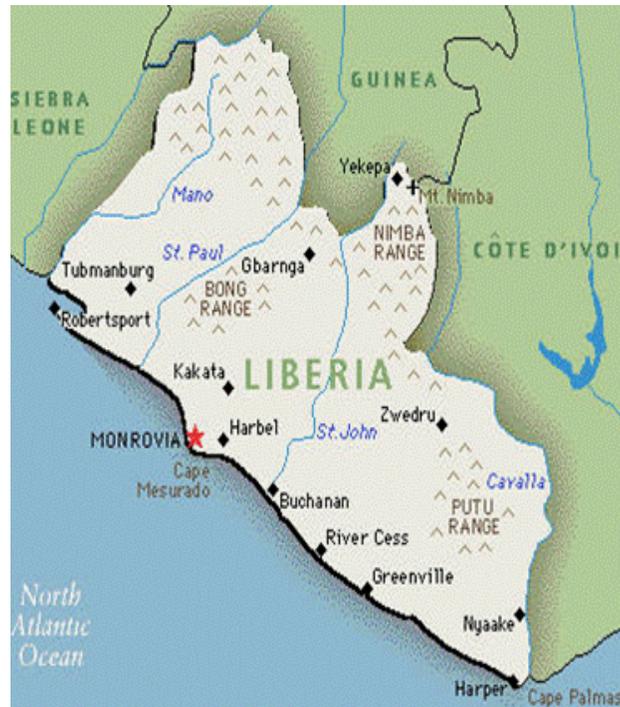
democratic reforms?

In "Stabilizing the Peace after Civil War," Hartzell, Hoddie and Rothchild have identified the key variables of a settlement environment that are conducive to lasting peace. These key variables focus on three different levels of analysis: They include the international system, characteristics of the countries experiencing civil conflict and characteristics of the conflict itself.⁷

At the level of the international system,

Hartzell et. al. argue that during the Cold War years the superpowers competed in supplying weapons to factions involved in civil wars. With the Cold War now over, civil war adversaries are aware that they are unlikely to receive superpower support should they renege on a negotiated settlement. On the basis of this new reality, Hartzell and her colleagues hypothesize that "civil war settlements negotiated during the post-Cold War period are more likely to prove stable than those negotiated during the Cold War."⁸

On the basis of the political conditions of countries, Hartzell and her colleagues contend that the one key factor that may influence the willingness of factions in a civil war to act to stabilize the peace is the previous experiences they have had with democratic governance. Actors in countries



that were democratic or semi-democratic prior to the civil war are more likely to conclude lasting peace than actors in countries that have had no prior experience with democracy. A history of participation or inclusion in the political process can help ease mutual suspicion and fear between civil war enemies, and provide them reassurance of a return to the democratic traditions to which they were accustomed to prior to the outbreak of the civil war.

With regards to the characteristics of the conflict itself, there is general agreement among political scientists that civil wars that break out because of identity conflict - that is, wars involving ethnic, religious, racial and linguistic conflicts - are more intense and therefore harder to settle than wars involving ideological and socioeconomic differences. As a result, Hartzell et. al. postulate that the probability of a lasting settlement is greater in ideological and socioeconomic conflicts than in identity conflicts.⁹

With respect to the duration of civil wars, Hartzell and his colleagues contend that the longer the duration of the war, the greater the probability that the negotiated settlement would prove stable. As civil wars become longer, it becomes increasingly clear to the various factions that victory cannot be won on the battlefield. As a result, the various factions would likely see a proposed alternative such as peaceful settlement more attractive.¹⁰

With regards to the impact that territorial autonomy would have on negotiated settlements in civil wars, it is argued that settlements that include provisions for territorial autonomy are more likely to be stable than those that do not. In this regard, territorial autonomy would serve to limit authority at the political center by shifting decision-making power to sub-units within the state. By transferring influence and decision-making power from the national level to the local level, groups are reassured that they have control of their political lives. This is especially so if autonomy for lower levels of government includes the autonomy to control their police and judicial institutions, and all other institutions that reinforce a group's sense of autonomy.¹¹

The role of third party enforcement of a negotiated peace settlement is also raised. Here, Hartzell and her colleagues hypothesize that ne-

gotiated settlements are more likely to prove stable if they include provisions for third-party enforcement. Their definition of third-party includes such multilateral organizations as the United Nations, the African Union, NEPAD and the Economic Community of West African States.¹²

Hartzell and her colleagues use statistical test data (proportional hazards mode 1) to determine which of the above hypotheses were most likely to influence the durability of negotiated civil war settlements. They find out that the most lasting peace settlements are likely to be those that (1) concern states in which the previous stable regime was a democracy; (2) conclude civil conflicts of low intensity that lasted for extended periods of time; (3) include settlement provisions for the territorial autonomy of threatened groups; (4) have security assurances offered to the former combatants by a third-party. The overall conclusion here is that any attempts at resolving a high intensity civil war in societies with no prior experience with democracy are unlikely to succeed.¹³

The implications here for the Liberian civil war are all too evident. Beginning with the first finding, we would need to ask ourselves if pre-civil war Liberia was an inclusive democracy. If it was, then this should remind the various warring factions which fought in the Liberian civil war that the democratic processes they were all so very well accustomed to in the prewar era provide a non-belligerent alternative to achieving their political objectives than continuous warfare. No group would want to resort to the use of bullets to achieve political objectives that could be achieved through the ballot box. But if a democratic culture was not in place prior to the civil war, then the chances for a lasting peace settlement in Liberia will be smaller.

With regards to the second finding, there is no denying that the Liberian Civil War was a war of high intensity. It was a war that devastated the entire social fabric of the nation. From education to healthcare to food production, all of the major economic infrastructures were destroyed. Several generations of the Liberian population were permanently displaced, as hundreds of thousands of people fled the country to seek refuge elsewhere. Virtually all foreign businesses pulled out of the

country. Many young Liberians in their teens and twenties have known nothing but war. Deprived of education, health and of the means of earning a living, their chances of ever living normal lives are remote. When the time comes for passing on the reins of government to the current generation, it will be difficult to find enough talented leaders.

Hartzell's third condition for a lasting negotiated peace settlement calls for territorial autonomy. Unfortunately, the peace settlement that ended the Liberian Civil War did not provide for territorial autonomy. Territorial autonomy would have meant instituting a federal governance structure in Liberia; that is, a federation in which the various factions and sub-regions within Liberia have subgovernmental sovereignty over their political lives. Such a settlement would have meant endorsing and legitimizing the factional warlords who controlled various territorial enclaves inside Liberia during the civil war. Traditionally, federations are created through a democratic process and not by warlords. With an estimated population of only 3 million people, it is uncertain that the political division of power between national and sub-national governments would have contributed to stability and lasting peace in Liberia. Besides, the ultimate objective of many of the warlords was national power, and not regional power. For example, when Charles Taylor established a sham state in his "capital city" Gbarnga in 1992, he referred to it as "Greater Liberia." He went on to appoint a governing cabinet that was charged with carrying out the functions of the national government.¹⁴

While it may be true that a negotiated peace settlement that is guaranteed by a third-party is conducive to lasting peace, member-states of ECOMOG - the West African Peace-Keeping force that monitored the transition to democracy in Liberia - were themselves faced with their own problems of democratic instability. To charge a group of countries that are not democratic to monitor and preside over negotiations that would lead to the institution of democracy was a self-defeating mission. The democratic culture remains alien to many of the member states of ECOMOG - many of which were either military or civilian dictatorships in the past, some currently. Meanwhile, from

the outset, not only was there polarization between French speaking and English speaking members of ECOMOG, there were perceptions by Charles Taylor and by francophone member-states in the mid-1990s that the Nigerian-led peace keeping force was biased and out to back the Doe government. These perceptions were behind the armed attacks that were occasionally directed against the peacekeeping forces by Charles Taylor's forces in the early days of the peacekeeping mission.¹⁵

On the other hand, for a society that cannot find political stability as a unitary state, it may well be worth experimenting with a federal structure. Ultimately, democracy is about self-determination. We are informed by the classical philosopher Aristotle that government is at its best when it is closest to the people. Liberia's population notwithstanding, a properly conceived federal or multi-level governing structure is a prescription that is worth considering. As we are going to see further below, a political arrangement that grants regional or local governing autonomy can go a long way in helping appease former warlords and their armies of supporters.

From the above discussion, it appears that the primary conditions for reconstruction in Liberia do seem to be in place. In the sections that follow, we are going to examine current political and economic trends in the country, to see how the careful marshalling of these resources can trigger the phoenix factor and launch Liberia's recovery from the ashes of its war-devastated economy.

Current Political and Economic Trends in Liberia

Politically, Liberia has gone from anarchy to a pariah state to a democratic trailblazer in less than two decades. The onset of anarchy in Liberia dates back to October 1985 when national elections in which the incumbent, Samuel Doe was given victory, were allegedly tainted by widespread fraud. Ethnic tensions ensued. A failed coup by General Thomas Quiwonkpa was followed by reprisals and widespread human rights abuses. Four years later, on December 24, 1989, the National Patriotic Front, a rebel movement led by Samuel

Doe's former cabinet official, Charles Taylor, began an insurgency that plunged the country into a fratricidal war that cost some 200,000 lives. The war spilled over into neighboring states, and foreign intervention, regional peacekeeping efforts, and international mediation have failed to put a quick end to fighting. Democratic processes that culminated in national elections in 1997 did little to put to rest the old antagonisms that were responsible for the insurgency. It was during this period that Liberia, under the rule of Charles Taylor, earned its reputation as a pariah state. Resources that should have gone into post-war reconstruction were invested in internal and cross-border counter-insurgencies. In the face of persistent uncertainty, businesses closed down and substantial capital and expertise fled the country.

Among specific uncertainties that beclouded Liberia's chances for postwar recovery after the 1997 elections was the continuous unrest created by insurgencies from all fronts. Amongst them were "Liberians United for Reconciliation and Democracy" (LURD), and the Movement for Democracy in Liberia (MODEL). LURD was backed by Guinea, the movement frequently attacked from Liberia's northern front. The insurgency caused the displacement of some 10,000 Liberians, many of whom escaped by moving further south to safer grounds close to Monrovia.¹⁶

With Guinea's support for LURD, there was looming potential for the civil war to escalate to an interstate war between Liberia and Guinea. Guinea was a founding member of a group of regional states that formed an interventionary force to stop the invasion of Liberia by Charles Taylor and his troops in the early stages of the conflict. It would later provide refuge to some 500,000 Liberians who were fleeing the war. The refugees soon became fodder to an armed movement, the ULIMO-K, which began recruiting them for cross-border counter-insurgency attacks against Taylor's regime. Over the years, cross-border hit-and-raids between the two countries provoked accusations and counter-accusations between the Guinean President, Lansana Conte and the Liberia's Charles Taylor. Guinea accused Taylor of providing a training base for a Guinean rebel

group – the Rassemblement des Forces Democratiques de Guinee, which was based in Liberia. Led by Gbago Zoumanigui, the group had carried out an unsuccessful coup against the Guinean government in 1996. Charles Taylor in turn accused Guinea for providing refuge and training grounds for rebels that were seeking to topple his regime.

In June 2003, peace-sponsored talks organized in Ghana by the Economic Community for West African States (ECOWAS) failed in bringing an end to the civil conflict. Two months later, on August 11, 2003, Charles Taylor was forced to resign under intense international pressure. The leaders of the various insurgent movements finally came together in August 18, 2003 and signed a comprehensive peace agreement that provided for the establishment of a two-year National Transition Government. The transition government was head Gyude Bryant and interim security was provided by a 15,000 strong UN/ECOWAS force.

New national elections were scheduled for October 11, 2005. No candidate won an absolute majority in the first round. In the November 8, 2005 runoff, Ellen Johnson Sirleaf won 59.4 percent and her challenger, George Weah 40.6 percent. In electing the continent's first female head of state, Liberia earned its reputation a democratic trailblazer. It further made history by becoming the second country in the world, after South Africa, to put together a Truth and Reconciliation Commission. Jerome Verdier would be the Commission's first Chairman.

Economically, Liberia remains an oasis of natural resources. With a total land surface of 96,320 sq. km and a 2006 population of 3.5 million, its soil is rich and fertile. Farming and food production were largely disrupted during the civil war. Today, however, with the right investment, agricultural production in Liberia can potentially feed all of West Africa. Major natural resources include rubber, coffee, cocoa, iron ore, timber, diamonds, gold, hydropower. Food crops include rice, cassava, palm oil, bananas, sugarcane, sheep, goats, and fish. Iron ore production was disrupted by the civil war, and up until the 2005 national elections, UN sanctions prevented Liberia from earning foreign revenues from diamond and tim-

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ber export. In 1999, its major export partners were Belgium (53 percent), Switzerland (9 percent), the U.S. (6 percent), and France (4). Its import partners include South Korea (30 percent), Italy (24 percent), Japan (15 percent), and Germany (9 percent). With an external debt burden of \$3.5 billion and an inflation rate of 5 percent, it is by contemporary African standards considered low. In the area of communications technology, Liberia remains under-exploited. It has less than 8,000 telephone lines nationwide, two television stations, one Internet Service Provider, no cell phones as of 1995, and under 300 Internet users (2000 figures).¹⁷ In the area of communications technology therefore, Liberia represents a tremendous investment opportunity. If the recent transition to democracy is sustained, investors are certainly going to see Liberia as attractive investment opportunity.

Despite a quarter century of domestic instability, Liberia remains the second largest maritime registrar in the world. About \$14 million are generated from the more than 1,800 ships and tankers that registered under its flag. With sustained stability, this is a revenue source that is poised to grow. Recently discovered offshore oil deposit will provide an important revenue source once exploitation begins.

Regionally, Liberia belongs to the Economic Community of West Africa. Prior to the civil war, it partnered with Guinea and Sierra Leone to form the Mano River Union (MRU) – a launching path to closely integrating the economies of the three countries. As with other pre-war development initiatives, MRU was disrupted by the civil war. It is an initiative that is certainly going to be revived as the new democratically elected government works to rebuild Liberia. An existing government agency – the Governance and Economic Management Program (GEMAP), founded in 2003, – is already working on identifying development initiatives and on promoting efficiency and transparency in government.

Assessing the Applicability of the Phoenix Factor in post-Civil War Liberia

While the phoenix factor has successfully ex-



President Johnson Sirleaf

plained postwar economic recovery in nations defeated in interstate wars, it has never been used to study nations whose economies were devastated by civil war. Our challenge here is to determine the applicability of this concept to a society whose economic infrastructure has been destroyed by civil war. Although the various insurgent movements in the Liberian civil war had some direct and indirect support from foreign states, there is no doubt that the conflict was essentially a civil war. The phoenix factor looks at the rate at which an economy will recover at the end of a war. With the 2005 democratic elections in Liberia, it is obvious that the civil war has ended. Resources that are allocated to guarding and fending off domestic and cross-border insurgencies are now going to be directed at reconstruction and development.

The phoenix factor is predicated on the premises that in the aftermath of a devastating war, there are certain psychological factors that allow nations to rise back up from the ashes of the devastation in 15 to 20 years to re-acquire the status or level of development they had before the outbreak of war. Liberia demonstrates physical and psychological indicators of a nation that has suffered from a devastating war. The lit-

erature on the phoenix factor further points out that a defeated but economically dynamic population living in the midst of ruins will recall their prewar standard of living and will be inspired by that nostalgia to rebuild back to those standards. Most adult Liberians know what Liberia looked like before the war. The motivation for work and sacrifice that are usually present in countries that have been devastated by warfare should be present in Liberia. With such motivation, Liberia should bring return to the level of development it showed in the prewar era. This should happen within the fifteen to twenty year time-span that is projected by this theory. For this to happen, Liberia will need to make substantial investments in the development of human capital. Today, Liberia remains a country that is replete with natural resources but deplete of human and technological know-how. With a high percentage of its entrepreneurial class now living abroad, there are very few Liberians left behind that have the necessary training to transform Liberia's natural wealth into prosperity and improved standards of living for its citizens. With the instability and uncertainty that is characteristic of postwar periods, attracting such know-how can be rather difficult. So what should Liberia do? We are going to address this in the next section.

Postwar Reconstruction - Propositions for an Enabling Environment

From the above discussions, it is evident that rebuilding Liberia in the aftermath of the civil war will be daunting but possible. What remains uncertain, however, is whether rebuilding can be achieved within the 15 to 20 year time span that is postulated by the phoenix factor. However, to rebuild and be successful, an encouraging environment is necessary. In this section we will develop and discuss some of the conditions conducive to such an environment.

Going Beyond National Reconciliation

War, especially civil war, is an embittering enterprise. It is an enterprise in which emotional and psychological wounds persist for years after the

physical fight is over and the physical wounds are healed. Forced to continue to share the same territory, and living side by side, losers are unlikely to forgive winners, and winners are unlikely to make concessions to losers, even in the name of reconciliation. People who have lost friends and families in wars are seldom psychologically ready to "forgive and forget." While it may be true that a national reconciliation conference was convened at the end of the Liberian Civil War, the conference did not go far enough in building or reestablishing trust among the various warring factions. Nothing did more harm to Liberia's first attempt at national reconciliation than the first democratic elections that came immediately after the reconciliation. It is true that there was no clear victor in the war. But victory in the elections that were conducted immediately following the national reconciliation conference gave the winning party the self-conceited impression that it had won the both on the battlefield as well as at the ballot box. This was why the tolerant and compromising climate that resulted from the national reconciliation was, immediately after the democratic elections, replaced by an uncompromising sense of arrogance, intolerance and invincibility on the part of the elected party. As victory in the democratic elections gave Charles Taylor recognition as Liberia's national leader, it left a sense of indignation in the minds of the other leaders who felt they would never have lost to Taylor had they not put down the arms to participate in the elections. Thus, while the elections may have legitimized Charles Taylor as Liberia's head of state, it alienated the other warlords, who, until the forced intervention of the international community, felt that they had an equal chance at winning on the battlefield.

It is true that prior to the onset of the negotiated peace settlement, the war was in a stalemate. In other words, the various warring factions were virtual equals in the battlefield, with none of the warlords in a position to win decisive victory. This is why many remained convinced that victory was stolen away from them in the democratic process – victory that could never have been achieved at the battlefield. It is this sense of indignation that contributed, in large

part, to a re-launching of hostilities in Liberia.

The above climate does not augur well for the lasting peace. And without the perception of an enduring peace, any hopes of postwar reconstruction will continue to remain unrealistic. Apparently, the interval between the convening of the national reconciliation conference and the staging of the elections was not long enough to allow for the consolidation of peace, trust and mutual respect. After an embittered civil war, an interim or “cooling off” period is needed before the implementation of democratic reforms. Today, with the help of hindsight, it is evident that immediate multiparty elections are not a political panacea for peace and post-war domestic harmony. It is important to go beyond the efforts of national reconciliation and democratic elections to look for various other conditions that can contribute to sustainable peace.

Foremost is a plan that should have been implemented requiring all of the warlords or factional leaders to retire from politics completely. It is an offer that should disqualify all warlords or former factional leaders from running for public office. It is inconceivable that any individual who has successfully led an army that forced a civil war to a stalemate is going to be willing to concede defeat in a democratic election. In other words, it is unthinkable that anyone who was determined to achieve power by the barrel of the gun is going to be willing to concede defeat at the ballot box. For these reasons, therefore, the proper policy position should be the exclusion of all former warlords from participation in the postwar democratic elections.

There is no doubt that such an idea would have been strongly opposed by the various warlords in the Liberian civil war. All postwar political rearrangements fall within the realm of high stakes politics. To be successful, negotiated strategies in such high stakes politics require the use of the “carrot and stick” approach. The “carrot” gives the subject an incentive or enticement to accept a proposed offer, while the “stick” lets the subject know that if they do not accept that offer, they will receive a specified penalty.

In the case of the Liberian Civil War, the carrot would have been an attractive retirement package for the warlords. The offer would give

the warlords the option to retire and live either in Liberia or migrate to the foreign country of their choice. Excluded from the offer would be the option to retire to any of the neighboring countries around Liberia. For those that decide to retire in Liberia, the offer would be sweetened with an internationally guaranteed loan that would allow them go into business for themselves in the private sector. Presumably, warlords are individuals with misdirected entrepreneurial ambitions. Their vision and dynamism can be cultivated and redirected at meaningful entrepreneurial contributions to national development. There is no better way to develop the private sector in a country than to lure and direct the talents of its most ambitious and dynamic citizens to invest in it. Instead of investing their time and energies in the uncertain and wasteful pursuit of warlordism, they will direct it to promoting the growth and development of their country. In a rather curious paradox, it would be an arrangement that could help transform Liberia’s warlords from merchants of destruction to merchants of construction. Instead of leading troops that are contributing to the destruction of Liberia, they will be leading a labor force that is contributing to the development of Liberia.

For any warlords that may have found the above offer unappealing and tried to turn it down, there was always the option for the international community to resort to the “stick” approach. It is an approach that would remind warlords who refuse to cooperate with the peace effort that there is going to be a price to pay. The price could take the form of sanctions that range from denial of legitimacy or recognition for the warlord, to threats of prosecution for war crimes, the freezing of personal assets, denial of travel abroad, and the ultimate possibility of house arrest or imprisonment. Obviously, such threats would make the offers in the “carrot” approach appear significantly more enticing.

In the meantime, eligibility to run for elected office will be restricted only to persons with no previous political agenda and no prior leadership affiliation in the civil war. Their primary allegiance will be to the nation of Liberia, and national unity will be at the top of their agenda. It is only when the national interest is placed ahead

of personal or factional interest that society's national resources can be directed at national development. Eliminating warlords and other factional leaders from the electoral process will ultimately eliminate factionalism in Liberia's postwar politics.

A More Activist Role by Liberians in the Diaspora

Liberians who live in the diaspora need to be invited to play a more visible role in the post-war reconstruction effort. Up until the 1997 elections, Liberians in the diaspora were not visibly active in campaigning for an end to the civil war. This partly explains why Ellen Johnson's performance in the first presidential elections was dismal. Despite her revered status in the international community, Sirleaf, the Unity Party's candidate for president did not actively publicize her international accomplishments inside Liberia. Even though she came out second, she won a mere 9.5 percent of the votes. Had she and other Liberians in the diaspora stayed active and visible in the peace efforts, her performance in the presidential elections would have been much better.

Outside Liberia, activism would have required the mobilization of Liberians in the diaspora to work in lobbying and in educating policymakers in their various countries of residence about the situation in Liberia. No one understands the internal dynamics of Liberia better than people who claim heritage to Liberia. If a lasting resolution to the Liberia conflict is ever going to be found, it will have to be crafted with input from the Liberian elite which is presently dispersed all over the world. It is therefore imperative that these elite remain actively involved in every stage of the current democratic reform and the postwar reconstruction efforts. To harmonize strategies, they are going to need to develop an international network of Liberian organizations in various parts of the world. Such harmonization is going to enable Liberians who live in Canada, Europe and the United States to focus on the same agenda. It is only by doing so that Liberians in the diaspora are going to be in a position to effectively lobby the various governmental and non-governmental organizations that

are interested in postwar reconstruction in Liberia.

In the economic sector, Liberians in the diaspora can play an even more meaningful role. Just through self-help and other private resources, they are in a position to turn the Liberian economy around without having to wait on international financial institutions for loans or economic aid. In the United States alone, the 1989 per capita income of Liberian immigrants was \$24,705. In his study, "How are Liberians Doing in the United States," Konia T. Kolléhon estimates that as of 1995, about 16,124 Liberians were living in the United States.¹⁸ If this population is multiplied by the \$24,705 per capita income it receives, it will add up to about \$400 million dollars.¹⁹ If just 10 percent of this amount is invested in Liberia annually, it will pour a total of \$40 million in investment capital into Liberia each year.

Playing the Americo-Liberian Card

Blacks who returned to Liberia from the United States in the 19th century voluntarily decided to remain affiliated with America. They maintained an identity that continued to link them with their American past. As Liberia works to rebuild from a devastating civil war, these links can now play a positive role. Using their historical ties with the United States, Liberians of American descent are in a position to lobby for greater American involvement in promoting peace and stability in Liberia. No other country outside of the United States pledges greater loyalty to America than Liberia. It is the only nation in the world whose citizens, albeit a small percentage, can trace their roots back to the United States.

Liberia is the only country outside of the United States whose cities and streets are named after American cities and historical figures. Its capital, Monrovia, is actually named after an American head of state. Nowhere else in the world is an American former head of state given such honor. On the basis of such a tribute alone, Liberia should be able to lobby the United States federal government for assistance. At lower levels of government, Liberia could lobby the various American states, counties, and cities after which most Liberian cities

and streets are named, for technical and financial assistance. The same is true with churches. Many of the churches in Liberia today were established by American missionaries. The parent churches are in a position to contribute to the reconstruction of schools, hospitals, orphanages, senior citizen and handicap care centers in postwar Liberia.

“No other country outside of the United States pledges greater loyalty to America than Liberia. It is the only nation in the world whose citizens, albeit a small percentage, can trace their roots back to the United States”

For tourism, retirement, and investment, Liberia does need to become the destination of choice for Americans. It can only become so if the quality of service in those cities and counties that are named after American cities and counties is developed to meet the standards that Americans are used to at home. If the quality of hospital or hotel services in Liberia is equal to the quality that Americans in Baltimore, Maryland are used to, there is no doubt that more Americans will be attracted to Liberia to visit or even retire.

One approach to developing the ties that could facilitate the flow of resources between local governments in Liberia and the U.S. could be through common “Sister-City” arrangements. The current ties that exist between American and Liberian cities are not being exploited well enough. The American political wheel turns only when it is lobbied. Sister-cities in Liberia must master the art of lobbying. Cities and counties that bear the same names should be encouraged to establish sister-city ties between the two countries – in addition, of course, to the ones that already exist. Not only would such ties facilitate educational and

cultural exchanges, it will enable them to trade or exchange ideas and experiences on how to solve common problems at the local government level.

Just as various states and municipalities in the United States compete in attracting foreign and out-of-state investments, regional and local governments in Liberia ought to be given the autonomy to compete in attracting foreign investments. The role of the national government should be limited to guarantees of stability and the establishment of an environment that is favorable to foreign investment. Regional and local governments should be allowed to shop around the world for investment and other business arrangements. And instead of exporting natural resources in their raw form to the world market, Liberia needs to invest in transforming these resources into finished or semi-finished goods prior to export. As one of the largest producers of rubber in Africa, Liberia needs to invest in developing the human and technological skills that would enable the transformation of this raw rubber into finished products. Such investment could, in the long run, make Liberia the largest supplier of auto tires in Africa, and possibly one of the largest to the American and European markets. The same is true with cocoa and other major raw materials that are produced in Liberia.

School districts in countries that have sister-city arrangements with Liberia can enter into agreements that would allow them to buy snacks and beverages from chocolate companies that buy their cocoa beans from Liberia. Agreements could be signed making Liberian coffee the coffee of choice for public personnel within the municipalities that have sister-city arrangements with Liberia.

The unique historical ties that exist between Liberia and the United States should make Liberia the gateway for U.S. companies that are interested in gaining access to the African market. Culturally and linguistically, it has a lot in common with the United States. It is English-speaking, and it has been exposed to American culture and society longer than any other country in Africa. Even its currency is named after and pegged on the American dollar. For such high-tech investments as land-based radar and satellite facilities that enable inter- and intra-continental communications,

Liberia presents an ideal location. By land, air or sea, Liberia has a competitive advantage over other potential offshore locations for the manufacture of consumer goods that are destined for the African, European or American market. In labor costs, Liberia presents an even more attractive investment opportunity. Whereas minimum wage for factory workers in Europe and the United States can range from \$6 an hour to as much as \$15 an hour, in Liberia, it is under a dollar. As the nation with the longest history of free trade in Africa, it has easy distribution links to various parts of the world. Just as products that have been “Made in China” have come to flood the American consumer market, the implementation of any of the above propositions should, in the not too distant future, enable “Made in Liberia” to become a household phrase in the United States and other parts of the world.

Ethnic Balancing

Africa is a mosaic of multiethnic populations. In almost every case, ethnic affinities are stronger than national identities. The eruption of conflict in many African countries has often been defined along ethnic and regional lines. Allegiance to most of the warlords in the Liberian Civil War was determined primarily by ethnic and regional affinities. With the war over, it is important for any government that wins national elections to be sensitive to this national characteristic. Both in parliament and in cabinet appointments, special care should be taken to make sure that all of the major ethnic groups are equitably represented in government. The same is true of the distribution of national resources. In a multiethnic society, there is no greater threat to national unity than the perception of regional or ethnic discrimination or bias in the distribution of national resources.

Besides forming a representative government at the national level, another important mechanism for ethnic balancing is the decentralization of the power of the national government. Giving local and regional governments the right to make policy decisions on how to manage their resources can help reduce perceptions of ethnic or regional bias.

Capitalizing on Sirleaf Johnson’s Political Capital

African societies, like societies in much of the Western world, are predominantly patriarchal. When Liberians elected a female head of state in 2005, they made history not just on the continent but worldwide. Liberia should be able to translate this milestone into political capital. Such political capital can be used in lobbying for international assistance for Liberia’s postwar reconstruction effort. Progressive groups around the world, including feminist and women’s organizations, who take pride in President Johnson’s achievement will certainly give a receptive and sympathetic ear when approached for financial assistance. But for this to happen, Sirleaf Johnson will need to work hard in making her presence visible in such international organizations. She will need to begin by registering as a fee-paying member in all major international conferences in which eligibility is open to her. She should have an office that advises her on upcoming international conferences on women and other progressive events. The staff should endeavor to schedule her to participate in at least four international conferences. When unable to attend, she can arrange to send a written speech, a symbolic gift or an official to represent her. Such visibility should translate the political capital that heralded her election into goodwill. More than financial or material support, international goodwill is the one asset that could greatly aid the economic recovery in postwar Liberia.

Conclusion

In this paper we have applied the phoenix factor to assessing postwar reconstruction efforts in Liberia. To this end, we have gone beyond assessing the applicability of the phoenix factor to Liberian development and have made multifaceted propositions for how Liberia can precipitate its postwar recovery efforts. This approach is in line with the recommendations of an international conference on post-conflict reconstruction in Africa. On October 14, 2004, delegates from Africa, Europe and the US met in South Africa

to discuss an African Union/New Partnership for Africa's Development (Nepad) framework for post-conflict reconstruction in Africa. There was unanimity amongst the delegates that postwar reconstruction requires a holistic and integrated framework that goes beyond promoting reconciliation and preventing the reoccurrence of conflict to actually addressing the factors that contributed to the outbreak of conflict, as well as factors that have the potential to reignite the conflict. It is an approach that at implementation must be multifaceted, incorporating a rebuilding of the social, economic, political and security framework of the country that has emerged from conflict.

The assessment of the applicability of the phoenix factor to post war reconstruction in Africa has produced mixed findings. On the one hand, we have realized that the concept is not quite applicable to explaining postwar recovery in wars fought in non-industrialized, Third World countries. The favorable occupational distributions that help accelerate postwar recovery in advanced industrial countries are not present in the Third World. For postwar recovery, therefore, most Third World societies have to depend on external human and material resources. In the case of Liberia, the forced dispersal of its middle class in foreign countries (initially as refugees and now as permanent citizens of those countries) and interruption of Liberian institutions of learning and training during the war years compound this deficiency in occupational distributions.

On the other hand, there are sufficient grounds to convince us that the phoenix factor has applicability in Liberia. Every country – developed or underdeveloped – has a golden era. The golden era is a stimulus for national development. Nations, large and small, will work hard to recapture lost glory. It is certain that prior to the outbreak of the Liberian civil war, there was an era of peace and stability in the country. Through memory and through the reading of history, Liberians of all ages long for a return to that era. That the country has moved politically from anarchy to a pariah state to a democratic trailblazer in less than two decades is ground for optimism. As they yearn for that era, Liberians will be inspired to work to rebuild

their economy back to the level it was operating prior to devastation by the civil war. In this regard, there is reason to expect that Liberia, like every other country that has experienced the phoenix factor, is going to rise from the ashes of war and regain its prewar status in fifteen to twenty years.

As Liberia works on consolidating the negotiated peace settlement, it ought to see the post-Cold War era as an opportunity to restructure its economy as it rebuilds. Rather than continuing to pursue the corporatist model that was characteristic of much of Africa in the era prior to democratic reforms, Liberia would need to pursue a development approach that is along the lines of competitive pluralism. In other words, if Liberia can avoid the mistakes of previous governments by implementing free market economic reforms instead of government directed development, the potential of realizing the phoenix factor would be greatly enhanced.

Notes

1 *American Political Science Review*, vol. 71, p. 1347-1366, 1977.

2 Jacek Kugler, *The Consequences of War* (Ph.d. Dissertation, University of Michigan, 1973), p.196-202.

3 Milton Friedman, "Foreign Economic Aid: Means and Objectives," and Charles Wolf, Jr. "Economic Aid Reconsidered," in *the United States and Developing Economies*, ed. Gustave Ranis, rev.ed. (New York: Norton, 1973), p. 250-278.

4 Organski and Kugler, p. 1365.

5 Organski and Kugler, p. 1347-1366

6 *Far Eastern Economic Review*, "Slow Start to Recovery," vol 155, December 1992, p. 42.

7 Caroline Hartzell, Matthew Hoddie, and Donald Rothchild, "Stabilizing the Peace After Civil War: An Investigation of Some Key Variables," *International Organization*, 55, 1, Winter 2001, pp. 183-308.

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8 Ibid, p. 189.

9 Ted Robert Gurr, *Ethic Warfare and the Changing Priorities of Global Security*. *Mediterranean Quarterly*, 1999, 1 (1): 82-89. Chaim Kaufmann, *Intervention in Ethnic and Ideological Civil Wars: The Origins and Management of Ethnic Conflict*. 1996, *International Security* 21 (2): pp. 41-75. Roy Licklider, *How Civil Wars End: Questions and Methods*. In *Stopping the Killing: How Civil Wars End*, Edited by Roy Licklider, New York: New York University Press, 1993, p. 3-19.

10 Hartzell et. al.

11 Alicia Levine, *Political Accommodation and the Prevention of Secessionist Violence*. In *the International Dimensions of Internal Conflict*, edited by Michael Brown, Cambridge: MIT Press, 1996, p. 311-340.

12 Hartzell, p. 192-193.

13 Hartzell, p. 202.

14 Werner Korte and Robert Kappel, *Crisis and Intervention: How ECOMOG Brought About Peace in Liberia, but Was Still Unable to Guarantee a Democratic New Beginning*, *Liberia Studies Journal*, XXV, 2, 2000, p. 86.

15 Werner Korte and Robert Kappel, *Crisis and Intervention: How ECOMOG Brought About Peace in Liberia, but Was Still Unable to Guarantee a Democratic New Beginning*, *Liberia Studies Journal*, XXV, 2, 2000, p. 86-91.

16 [Wysiwyg://41/http://news.bbc.co.uk/africa/newsid_1780000/1780663.stm](http://news.bbc.co.uk/africa/newsid_1780000/1780663.stm).

17 <http://www.odci.gov/cia/publications/factbook/geos/li.html>.

18 <http://www.odci.gov/cia/publications/factbook/geos/li.html>.

19 Konia T. Kollehlon, *How are Liberians Doing in the United States*, *Liberian Studies Journal*, 2002, p. 44.

20 This figure would be higher if the 2002 income figures were available. But at the time the article was written, the latest U.S. Census figures which contain income data for various ethnic groups in the U.S. was not published.

However, given the rate at which personal income in the United States grew between 1989 and 2002, and the rate at which the Liberian population grew during this same period, the total annual income of the Liberians in the United States today could very well

range between \$500 million to \$1 billion.

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AID AND DEBT – PROGRESS SINCE 2000? WILL \$50 BILLION BE GRANTED ANNUALLY BY 2010?

LAWALLEY COLE

Objective: *This paper aims at analyzing some of the most recent trends in development cooperation with a focus on examining global rights and responsibilities, as well as issues of equity in efforts made to reduce poverty in Africa. It will explore how aid contributes to poverty reduction and the whole questions of ownership and partnerships in international development cooperation between Africa and the rich world.*

One of the greatest political challenges in this millennium is to ensure improved international development cooperation to eradicate poverty and promote poor people's basic rights. This means a much greater commitment by Northern donors to high quality aid programs that work in the best interests of poor people. It also means recognizing the importance of the wider economic and political context in which aid programs operate, in order to improve the prospects for inclusive social and economic development.

With rising poverty around the globe - in both the North and South (with Africa continuing to manifest the worst indicators) – such development cooperation is not so much an option or a political choice for Northern action. It is, rather, an obligation both morally and for reasons of self-interest; in an increasingly interdependent world where many issues can only be resolved internationally. Northern governments should regard development cooperation as an investment in their own futures.

Economic globalization means that development cooperation between and among Northern and Southern countries should have a much higher priority in national and international politics where 'domestic' and 'foreign' issues are increasingly blurred. The eradication of poverty should be regarded as an international public good that promotes peace, security and environmental sustainability. The onus thus falls on everyone. In-



dividuals as well as governments must take action.

The reality, however, is that despite the number of promises already made, Northern states and institutions are palpably failing to give priority to development cooperation. Debt remains a crisis, particularly for the most severely indebted countries in Africa and for many of their people who struggle every day to feed their families, pay for critical medical treatment, or send their children to school. It is a crisis whose other faces are disease, illiteracy and early death. Until the world realizes that globalization is real and dependent on the well being of poorer nations, the struggle for resource reallocation will remain an uphill one.

On January 6, 2006, the International Monetary Fund (IMF) cancelled the debts owed to it by 19 of the world's poorest countries. This is likely to change the lives of millions of people. Across Africa, lifting the burden of debt will allow millions to be directed to fighting poverty instead of repaying rich countries. African governments have developed poverty plans and clear methods for spending the money saved to help their citizens, instead of allowing the finance to be wasted through corrup-

tion. However, much more debt cancellation is still needed. Over sixty countries, many of which are in Africa, will fail to reach the Millennium Development Goals unless their debts are fully cancelled.

The message that would emerge is that massive allocations of global resources are made when the economic stability and well being of the developed countries appear to be threatened. The calls for investment in development and human rights remain, unfortunately, only rhetoric and have not yet succeeded in generating a comparable response. A solution is urgently needed to address developing world indebtedness, which is a major aspect of the resource problem for the basic social sectors.

1. Political overview

Sub-Saharan Africa is a region where absolute poverty continues to grow, where conflicts and diseases including HIV/AIDS have killed millions of people over the past decade, and where the capacities of often undemocratic forms of governments have been weakened even further by decades of structural adjustment policies imposed by the World Bank, the IMF, and other major donors. The world community has so far displayed a fair amount of concern and even some serious rhetoric, but offered little action. Currently, millions of Africans die each year because they are too poor to stay alive. They die in hospital wards that lack drugs, in villages that lack anti-malarial bed nets, in houses that lack safe drinking water, and in environments characterized by ignorance and lack of basic education.

Despite the rhetoric and self-interest surrounding calls for increased aid flows to Africa, the fact is that aid has not really worked for the continent. Many have argued that it has instead been used as a tool to impose development paradigms, expenditure and investment patterns, and even forms and concepts of governance that have left Africa trapped in an aid syndrome, which only begs for more development aid. While the arguments for increasing the effectiveness of development aid may have some merit, the very existence of the aid trap and dependency demands more serious analysis and solutions.

In 2000, before the attacks in New York and Washington, the international community led by the United Nations had already made important commitments to increasing aid to help ease poverty in the South. The Millennium Declaration issued by the UN a year before 9/11 called on all countries to “spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty.” In September 2005, the Special UN World Summit was held to review progress with respect to the Millennium Declaration and reiterated the long-standing goal for the rich countries to devote 0.7 percent of their Gross National Income (GNI) to Official Development Assistance (ODA).

In July 2005, leaders at the G8 Summit in Gleneagles, Scotland focused on Africa and climate change. They agreed to double aid to Africa and to eliminate outstanding debts of the poorest countries. The G8 nations will together increase aid to developing countries by around \$50 billion a year by 2010. Of this, at least \$25 billion will go to Africa. The G8 leaders also promised increased support for African peace keeping forces to help to deter, prevent and resolve conflicts in Africa, and pledged additional investment in education and the fight against HIV/AIDS, malaria, tuberculosis and other deadly diseases.

Since this Summit, some limited but welcome progress has been made on debt cancellation for the poorest countries. Perhaps the most important gain was the recognition that the poorest countries required 100 percent debt cancellation. The cancellation of the IMF debt is the first part of the deal struck by the G8 in 2005 to cancel debts owed by up to 40 of the world's poorest countries to the World Bank, the IMF, and the African Development Bank. On January 6, 2006, the IMF cancelled the debts owed to it by 19 of the world's poorest countries. This is likely to change the lives of millions of people. For these countries, 14 of which are in Africa, the deal is worth \$1 billion a year for 40 years. In Ghana, the money saved is being used for basic infrastructure, including rural feeder roads, as well as increased expenditure on education and health care. In Tanzania, the government is using the money saved to import

vital food supplies for those affected by drought. In Zambia, the reduction in its total stock of debt from \$7.1 billion a few years ago to \$500 million now is enabling the government to announce free basic health care, in a country where one in ten children die before their first birthday. Across Africa, lifting the burden of debt is allowing millions of dollars to be directed to fighting poverty instead of repaying rich countries. However, in the case of Nigeria's 'Paris Club', a group of creditors that are dominated by the G8, also agreed to cancel \$18 billion of Nigeria's \$30 billion debt in return for Nigeria repaying the remaining \$12 billion, which constitutes 40 percent of the costs of the debt deal from its own resources during 2006. And while new conditions were not attached to this debt relief, the countries receiving it have already had to withstand several years of harmful IMF and World Bank conditions under 'stabilization' and 'adjustment' programs, in order to qualify.

“While the arguments for increasing the effectiveness of development aid may have some merit, the very existence of the aid trap and dependency demands more serious analysis and solutions.”

It is, however, extremely important to urgently address the problem of 'illegitimate' debts that countries incurred under military dictatorships and undemocratic governments, often used for purposes unrelated to poverty reduction. South Africa, which continues to repay \$22 billion of debt accrued under the apartheid regime, is a case in point. Likewise, the Democratic Republic of Congo and Kenya continue to pay back debts that were lent recklessly to unaccountable governments. In this respect, cancellation of almost two thirds of Nigeria's debt es-

tablished an important precedent. The G8 must now discuss debt cancellation for a wider group of countries that are outside the HIPC initiative.

2. Development cooperation and the Millennium Development Goals: Why Aid for Africa?

In theory, international aid should redress capital deficiencies (financial, physical and human) in poor nations, as well as boost local demand and supply. The reality, however, is that aid is driven by other motivations. We consider the following issues that have been the subject of considerable debate:

- International aid is integral to donor countries' development cooperation policies, which in turn are defined by their foreign and security policies. Certain 'motivating factors' on the part of donors does undermine ownership, and therefore the sustainability of the African development process.
- Donors use aid to create and foster the impression among recipient countries that can help them but, doing so has failed to improve the situation of people living in poverty; it has instead promoted the interests of donors.
- Some politicians and business people in donor countries promote aid out of self-interest, in terms of securing foreign policy influence, constituency support or commercial benefits.
- Some aid officials and NGOs are also self-interested, in terms of career and financial opportunities. Some are guided by genuine humanitarian instincts or solidarity.
- African countries are compelled to accept aid because of their continued weakness and economic vulnerability, and their urgent short-term needs.
- The economic justification for aid is based on a perceived inherent lack of capacity of the African continent to rescue itself from the quagmire of poverty and crisis.
- International aid and the conditions attached to it have undermined decades of collectively negotiated governance processes in Africa, destroying the values that held societies together in favor of outsider definitions of leadership and development. Aid is not, therefore, the appropriate vehicle

to enforce 'good governance' on the continent.

- Measures introduced by the International Monetary Fund (IMF) and the World Bank, such as Structural Adjustment Programs (SAPs), the Enhanced Structural Adjustment Facility (ESAF) of 1987, the Heavily Indebted Poor Countries (HIPC) Initiative, the Poverty Reduction and Growth Facility (1999) and recently the Poverty Reduction Strategy Papers (PRSPs) have failed to achieve their objectives. The impoverishment of the majority of the world's inhabitants has continued apace. There is growing consensus on the failure of the policies of the IMF and the World Bank to reduce poverty and on the need for alternative policies that make a real difference to the lives of people living in poverty.
- Civil society organizations (CSOs) in the recipient countries also expect donor aid to alleviate poverty and lead to sustainable development.
- Both aid and debt are working as instruments of control and domination of African countries by developed countries. Debt servicing has drained public budgets, leaving aid investments without adequate support in the form of counterpart funds and additional domestic resources to operate and maintain facilities.
- Unsustainable debt and aid are the products of an aid regime that is driven by imbalances of global power. Debtor countries need to take more proactive positions and demand that donor countries use all aid to write off all loans to poor nations. A zero-debt-crisis development option is now required. There should therefore be 'No Aid, No Debt'.
- The public who pay the taxes that fund aid often express their wish that it should be directed at poverty reduction and self determination.
- Donors expect aid to induce governments to adopt policies and programs that lead to improved economic performance as well as facilitate the implementation of such programs.

Despite the recent focus on good governance as a condition of aid, there is an argument that suggests that the whole aid system undermines good governance. Many in Africa believe that aid has tended to enrich the political and economic elite, to strengthen central, as opposed to local, government institutions to benefit men more than women and children, and urban

more than rural areas. In so doing, it has increased polarisation among different groups in society. Again, as noted by the World Bank, 'a typical poor country receives 90 percent of GDP through international aid, but the poorest quartile of the population consumes only 4 percent of the GDP and aid reaches less than 10 percent of the African population.'

There are those who are also arguing that development aid has undermined Africa's own development ideas. Initiatives that have been thwarted include: the Lagos Plan of Action of 1980; the Alternative Country Plans developed by Zambia and Tanzania when they broke relations with the IMF in the mid 1980s; the UN-led African Alternative to Structural Adjustment of 1989. These and other programs, through which aid recipients tried to develop and formulate new development agendas, promoting African self-reliance was not taken seriously. They were denied development finance in favor of SAPs, which have been disastrous for Africa. These issues must be fully addressed if Africa is to break the impasse of its underdevelopment. In countries such as Tanzania and Zambia, the failure of aid (among other things) to address development problems has led to calls for more aid which, instead of addressing the problems, has perpetuated dependency. Developmental benefits could have been achieved if aid had been well-directed, especially towards enhancing local productive capacity and stimulating local demand for goods and services. Africans are becoming increasingly aware of the underlying factors that prevent aid being as effective as they have been led to believe it would be.

Aid and the Millennium Development Goals (MDGs)

In December 2005, the UN General Assembly agreed that pledges made at the 2002 Monterrey Consensus on Financing for Development would be reviewed in 2008. The Monterrey Consensus did not only launch new aid commitments by several donors (the European Union, the US, and Canada), but also committed UN

member states to the MDGs. The MDGs are important steps which would indicate progress in meeting the international community's commitments to economic, social and cultural rights. These goals aspire to bring greater poverty focus to ODA in efforts to halve the proportion of people living in absolute poverty and hunger as well as to achieve several social development goals by 2015. The MDGs are important steps which would indicate progress in meeting the international community's commitments to economic, social and cultural rights. In the lead-up to the September 2005 UN World Summit, the UN Millennium Project estimated the additional financing gap needed to achieve the MDGs to be \$46.6 billion for 2006, rising to \$73.5 billion by 2015.

With respect to the achievement of the MDGs, 42 of the 47 countries in Sub-Saharan Africa are considered off-track for half of the targets and 12 countries for all of the targets. Many of the MDGs are considered to be "simply unrealistic for many countries," where the world community is "asking [them] to perform at the top end of the world's historical experience of the best performers of the last 50 years." The rate of growth expected of Sub-Saharan Africa, after a decade of very marginal growth, has in fact only been accomplished by five developing countries in the world in the past 15 years. In primary education, for example, the expectation is progress at a rate over 11 years that took rich countries close to a century.

Some studies conclude that the emphasis should not be on whether a country is failing to meet a target, but on its obligation under international human rights law to make maximum sustained progress against poverty. Aid can play a role, but there are other critical policies such as debt cancellation, eliminating IMF and World Bank structural adjustment conditionalities, democratic governance, gender equality, fair trade and more equitable international institutions that set limiting parameters for this progress. MDG Goal Eight, focusing on North/South development partnership, with its weak targets, bias towards trade and investment liberalization, and lack of timelines, fails to deliver much hope in many of these important areas.

A more effective approach to ending pov-

erty is one that stresses universal human rights obligations as guiding principles for the policies of all countries and the multilateral system. Countries with the resources and power to shape the international system have a particular obligation to structure these policies so that poor countries and poor people can maximize progress in realizing their rights guaranteed by international law. Without such an approach, progress is likely not to exceed historical patterns of slow improvements for many countries. Incremental advances, assisted by large aid infusions, will be accompanied by growing inequality at global and national levels as a result of the continuance of Northern-driven liberalization policies in trade and investment, which potentially create conditions for a reversal of progress in later years.

Unfortunately, the MDGs are largely silent on basic issues of citizens' civil and political rights, empowerment and improved equality (non-discrimination). While the MDGs express concrete goals, they nevertheless ignore the politics inherent in working for their achievement in many countries. The freedom to exercise political and civil rights is crucial to the realization and defence of economic, social and cultural rights. Underneath the concept of participation which is prominent in the discourse of many development actors are a series of internationally guaranteed rights: freedom of association (including access to information), freedom of the press, freedom of association and assembly, and the right to participate in public affairs.

3. The Issues with Debt Cancellation – Will it make a difference?

As noted earlier, Northern countries have now accepted that the poorest countries required 100 percent debt cancellation. Unfortunately, this recognition comes with many strings attached. In September 2005, the governing bodies of the World Bank and the IMF approved a debt cancellation package for a select 18 developing countries that have completed their intensive HIPC (heavily indebted poor countries) conditionalities with these institutions. This package covers approximately \$40 billion in debt for the initial 18 coun-

tries (and with a further 20 countries possibly eligible in the future, this amount could increase), at a cost of more than \$10 billion to donors over the next 10 years, all of which will be eligible as ODA.

As already mentioned, Nigeria's creditors agreed to cancel \$18 billion or 60 percent of Nigeria's outstanding debt in October 2005. However, to receive this cancellation package, Nigeria had to agree to pay its creditors, some of the richest nations in the world, \$12.4 billion in debt servicing arrears within the next few months, a sum far greater than the benefits from the September debt deal for Africa in the next decade.

Donors will be counting significant additional amounts of debt cancellation as ODA in the next several years. CSOs have long called for comprehensive unconditional debt cancellation for more than 50 of the poorest indebted countries as a foundation for sustainable poverty reduction. Resources are available within the International Monetary Fund and the World Bank to cover a substantial portion of this cancellation. Where donors contribute bilateral funds to pay off the full value of debt cancelled, only a small part of this cancelled debt each year relates to the annual savings by the indebted countries for the service payments that they were actually making at the time of cancellation. This latter amount is the real contribution to new resources for developing countries from debt cancellation. As it stands now, donors will be able to meet a major part of their commitments to future aid "increases" with little of these paper increases actually available to meet the needs of the poor. CSOs have long call for debt cancellation to be additional to ODA.

The Gleneagles G8 Summit in Scotland in July 2005 signaled an aid increase of \$50 billion per year by 2010, with increased attention to urgent development needs in Africa. The September UN Summit acknowledged these aid increases, and world leaders renewed their commitment to meet the MDGs, with particular attention to women's human rights. It is important to note, however, that in spite of clear evidence that the MDG target on eliminating gender disparity in primary and secondary education by 2005 has not been met, donors did not make new additional



A poverty-stricken neighborhood in Cape Town, South Africa

commitments to reach the MDGs. The 2006 DAC Development Co-operation Report notes the collective failure shared by all countries to meet the 2005 target on gender equality. It is becoming more apparent that at least some of these commitments for timetables to increase aid are rather dubious. With a continued focus on the "war on terrorism" as well as large debt cancellations for Iraq and Nigeria, there is a real danger that a significant part of the \$50 billion in additional aid will not reach Africa and its poorest countries.

The PRSPs – What difference will aid cancellation make with this?

Much of donor aid to Africa remains highly conditional on African governments' complying with donor policy prescriptions and terms that undermine these governments' accountability to their citizens. The UK-sponsored Commission for Africa noted that aid to Africa "is accompanied by many onerous conditions that are often of dubious value," which have increased under IMF-World Bank approved PRSPs. There is ample evidence showing how conditionalities weaken the effectiveness of foreign aid. As noted in the Reality of Aid 2002 Report, "conditionality defeats the objectives of development cooperation because it enhances the inequality in the aid relationship. In many cases, it is contrary to the objectives of development for the recipient country and it abets the lack of accountability, undemocratic governance, and even corruption."

With the IMF/World Bank lending programs now focusing on poverty reduction, this approach, built on the principles of the Comprehensive Development Framework implied that countries would design their own development strategies focused on poverty reduction as well as compile a Poverty Reduction Strategy Paper (PRSP). In principle, PRSPs were: a) to be developed in a participatory way, b) to be nationally owned and c) to lay out a policy framework and agenda for tackling poverty.

The key element of the new approach was a focus on poverty reduction in the administration of the Enhanced HIPC Initiative, which was to grant deeper and quicker debt relief as well as pave the way for new grants and soft loans for the HIPC countries.

One of the main features of the enhanced HIPC is the mandatory requirement of eligible countries to prepare a PRSP. Most African countries have for a long time drawn up their own homegrown Poverty Reduction Strategies (PRS) as long-term planning tools based on local priorities and aspirations. The PRSP is an innovation in internationally financed development initiatives, born out of recognition of the inadequacy of previous initiatives to address the core problem of poverty, given that people living in poverty had not been part of the process to address it. In preparing the PRSP, governments are expected to show clearly the links between macro-economic policies and agreed international social development goals to be reached by 2015.

Most analysts have questioned the effectiveness of PRSPs. This is because the primary objective of the enhanced HIPC of granting deeper and quicker debt relief has not materialised. PRSPs are meant to be country-driven, prepared and developed transparently with the broad participation of civil society. This is intended to allow for identification of local priorities and needs and making choices based on thorough debates, dialogue and consensus building. In practice, however, effective decision-making, veto power and the 'seal of approval' still remain with the International Financial Institutions (IFIs) who dictate what PRSPs should contain. Moreover, because HIPCs want

debt relief and future concessional loans as soon as possible, they are compelled to make sure the strategies meet IMF and World Bank expectations. The PRSP process should normally be led by Government and must involve civil society. It should also be coordinated largely by donors who would provide budgetary support rather than fund projects. National actions and international cooperation and commitments would therefore facilitate the achievement of the various goals. However, there are inconsistencies which show that the broad macroeconomic objectives of most countries involved in the process are inconsistent with the poverty reduction goals. One of the reasons for this inconsistency is the tension between the desire to provide debt relief quickly and the lack of a proper poverty reduction framework. Debt relief must therefore be de-linked from the PRSP process and a consensus and commitment reached by both donors and recipients that resources freed through debt relief be directed towards social development. The exclusive role of monitoring poverty reduction programme performance should be given to a wider constituency, including civil society as well as the World Bank, IMF and UN agencies.

4. The aid/debt synergy

Will \$50 billion be granted annually by 2010?

We have already noted that the Gleneagles G8 Summit in Scotland in July 2005 pledged an aid increase of \$50 billion per year by 2010, with increased attention to urgent development needs in Africa. Much of this money had in fact already been committed, and 25 percent of the increase was from non-G8 donors. Even so, substantial new sums were promised, of between \$15 - 20 billion annually by the end of the decade.

These G8 promises include:

- An EU wide commitment to raise aid spending to 0.56 percent of national income by 2010, worth some \$38 billion, with at least half going to Africa.
- An EU commitment to build on this, and reach the UN aid target of 0.7 percent of national income by 2015 (and 2013 in the case of the UK).
- A proposal from the US to double aid to Sub-Saharan Africa, as part of a \$5 billion increase.

- An increase in Japanese aid of \$1 billion in 2006, rising to \$3 billion extra in 2010.
- A doubling of aid given by Canada from 2001 worth \$1.5 billion extra by 2010.

If all these promises are kept, then by 2010 the rich countries will collectively be giving 0.36 percent of their income in aid, which means they will be halfway to reaching the UN aid target of 0.7 percent which they agreed in 1970. Secondly, on aid effectiveness, the G8 promised to substantially improve the quality of its aid, and ensure that it leads to sustainable benefits for poor people. In particular, the Gleneagles communiqué acknowledged that the conditions attached to aid have often failed or proven counterproductive when it recognized the right of developing countries to, “decide, plan and sequence their economic policies to fit with their own development strategies”. Likewise, the G8 recognized the need to allocate aid on the basis of need when it pledged to focus on low income countries committed to growth, poverty reduction and good governance. Finally, they committed to implement and be monitored on the aid effectiveness targets for 2010 which they adopted at the Paris High Level Forum in March 2005. These targets do not address either ‘tied aid’, the practice of requiring aid to be spent on goods and services from the donor country, or the removal of economic policy conditions from aid programs. Nonetheless, if implemented these targets would have a significant impact on the quality of aid.

Unfortunately, given the trends in development cooperation as we see it today, it is highly unlikely that \$50 billion will be granted by 2010. The UN and international civil society organizations have issued ambitious calls for global finance that current commitments will certainly fall short of. Millennium Goal Eight calls on donors to commit to “more generous aid for countries committed to poverty reduction.” However, the early signs on aid volume are not encouraging. In 2005, 85 percent of the aid increase showing up in donors’ accounts was the result of the write-off of Iraqi and Nigerian debt – in the case of the UK, over one third of all aid in 2005 was the result of these deals. Excluding debt cancellation and tsunami related emergency aid, between

2004 and 2005 global aid increased by 7 percent, putting donors behind schedule in terms of providing an additional \$50 billion by 2010.

Given the current trends, it is highly likely that debt cancellation will continue to account for most of the rise in aid until 2008. Because most of this debt was not being serviced, the headline figures are misleading – only a small proportion of the rise is a genuine resource transfer to African countries. The upshot is that, when the debt-related spike in aid figures has passed, donors will face the challenge of increasing their real ‘cash’ spending on aid dramatically in the space of just two or three years.

The challenge is greatest for countries such as Germany, which must more than double its aid by 2010 to meet the EU target, and Italy, which must almost triple it. These countries and others urgently need a year-by-year road map for progress towards 0.56 percent if the promise is going to be kept and the aid spent effectively. Yet at present, these countries are not meeting expectations. Even in the UK, where the government has publicly committed to reaching the target, the underlying rate of increase in aid, once debt relief is excluded, is insufficient. Although the Department for International Development (DFID)’s core departmental budget has increased significantly, by itself this accounted for less than half of the overall aid spend in 2005.

On ‘better aid’, the G8’s performance again falls far short of what is needed. Although the UK government committed to ending harmful policy conditions in 2005, and the G8 communiqué echoed this language, other rich countries have been reluctant to cut the strings they attach to their aid. So far, no other G8 member has followed the UK’s example, or pressed for significant reform of the World Bank and IMF’s own use of conditions.

What needs to happen next?

The donor countries still have sufficient time to deliver their promises, provided they act now to set concrete plans for doing so. To date progress has been mixed: Japan still has no clear timetable for disbursing the \$10 billion extra aid over five years pledged at Gleneagles; there has been no clear indication that Canada will increase

aid in the budget of the new Canadian government; and in the EU, Italy and Germany have yet to provide details as to when they will meet their pledges. The coming months provide a narrow window in which to address these issues.

In terms of the 'better aid' agenda, donor progress has been similarly halting and patchy. In particular, donors need to act on the pledge in the Gleneagles communiqué and change their aid policies to remove harmful conditions attached to the disbursement of aid. At the moment, some countries that are led by the US are actually pushing for greater levels of conditionality due to concerns about corruption, although Germany has made more recent progressive statements.

War on terror remains chief priority with the US spending \$8bn a month in Iraq alone

Simulations made by the Development Assistance Committee (DAC) Secretariat show that the performance of US ODA will not improve between 2006 and 2010, remaining at 0.18 percent of its GNI by 2010. To meet the G8 Summit commitment to Africa and other donors, much of the load will have to be carried by European Union donors, which promised to increase ODA from the 2004 level of 0.35 percent of GNI in 2004 to a projected collective average of 0.56 percent in 2010. Meanwhile U.S. military and security/anti-terrorism budgets have been expanding considerably. While donors grudgingly commit new resources to ODA to fund the MDGs, money is readily available to fund military and strengthened security for counter-terrorism. The United States has often been regarded as the most unwilling among the donors to make concrete future pledges for the global fight against poverty as it continues to spend tens of billions of dollars to finance its military operations in Iraq, Afghanistan, and other regions. Based on the latest available comparative data in 2003, the U.S. spends 76 times more for its war in Iraq compared to its total ODA for health; 196 times more compared to education, and 480 times more compared to water supply and sanitation, all critical sectors for achieving the MDGs. While the U.S. military budget greatly exceeds that of all other industrial countries,

these latter countries still devote considerable resources to their military. Global military spending in 2004 for the first time exceeded \$1 trillion.

5. Some policy considerations and recommendations

Africa definitely needs aid. However, the form that this aid takes and what alternatives are available is now the issue. As a continent, Africa will have to look at the process of accessing or receiving aid, the management of the process and the ultimate outcome. Africa must accelerate reform. And the developed world must increase and improve its aid, and stop doing those things which hinder Africa's progress. The developed world has a moral duty – as well as a powerful motive of self-interest – to assist Africa. We need to change the aid regime to a 'win-win' situation in which the giver and the recipient are satisfied and ultimately contribute to Africa's development. As Africans we need to define what we mean by our own development, set our own agenda and then give the donor countries our prescription. We need a new kind of partnership – that is a new kind of development, based on mutual respect and solidarity, and rooted in a sound analysis of what actually works.

If aid is to continue:

- We the Africans should be part of the systems that govern aid.
- We as aid recipients should be able to manage the processes of the aid regime.
- The issue of conditionalities and ownership should be addressed by the giver and the receiver being open to each other.
- For the sake of ownership, we as recipients should be involved in the proposals for development aid. The same should be done for the conditionalities.

We need an urgent fresh start at the international level with all the participants in the process having an equal opportunity, notwithstanding the fact that the playing field is not level. We also have to live within our means and be aware of the limitations and have these addressed, at the same time being mindful of our depleting resources while maximizing our opportunities. As a continent, we as Africans need to be more

productive and use resources more efficiently, by redirecting aid to development, concentrating on that which we can do best and having systems that are home-grown and sustainable. We must also reduce Africa's dependence on aid. One way to do this is to adhere to conditions that uphold traditional systems, patterns of governance and justice, strengthening positive aspects of our cultural heritage and discarding negative and harmful ones as well as upholding the values of social capital. External influences should be compatible with citizens' aspirations. Participation should mean that citizens are consulted on a regular basis, their voices heard in making policies and decisions that affect them. They should be able to exercise as much as possible their internationally guaranteed rights. The process should encourage consensus to build a sense of belonging and ownership.

“The developed world has a moral duty – as well as a powerful motive of self-interest – to assist Africa.”

Participation of all should be embedded in our development strategies. Assigning specific roles and responsibilities to different parties in the public sector will help ensure that there is accountability and ownership of the process. More emphasis is needed on micro-level issues, especially the improvement in the social sectors and in poverty reduction. Improved governance and management of aid within governance and civil society organizations will mean there is efficient use of resources. Competence and a good understanding of the conditions and conditionality put forward by donors will enable us Africans to reject what we see as damaging. A well-versed consortium of aid recipients is needed to lobby and push forward a collective agenda and common position on external aid. This consortium should have the capacity

to negotiate for resources and get more appropriate responses from donor agencies for better conditions that will address the strategic needs of the peoples of the recipient countries. They should also go along with demands that range from civil and political rights to public goods and services, and other rights and freedoms. Attention should also be paid to other aspects of poverty that do not necessarily depend on economic growth. This would go with the ability of recipient governments to initiate programs that are pro-poor and of CSOs to intensify the role of safeguarding the citizens.

Donors should be consistent when they apply conditionality for aid; the current inconsistencies make them suspect and expose their socio-economic and political strategic interests, which in most cases are to their own benefit. If the sovereignty of the African continent is to be restored and poverty attacked meaningfully, the synergy between debt and aid needs to be better understood, with positive aspects being strengthened, while negative ones are done away with. Both debtor and creditor countries should work towards strengthening the UN System and establishing other global governance institutions, such as the Global Central Bank, a Global Investment Trust and Transfer Mechanism and a fairer WTO, as suggested by the UNDP Human Development Report in 1999. Within Africa, it is necessary to be frank about corruption, incompetence and conflict in the continent.

In the light of the above, we make the following specific recommendations:

- (a) All developed countries must increase their development aid to the level of 0.7 percent of their Gross Domestic Product (GDP) as agreed upon internationally. For poor countries in sub-Saharan Africa which need it, the objective must be 100 per cent debt cancellation as soon as possible. This must be part of a financing package for these countries – including those excluded from current debt schemes – to achieve the MDGs.
- (b) The democracies in Africa – South Africa, Nigeria, Senegal, Botswana, Zambia and Tanzania and others – must join together and issue a call for action to overcome deficien-

cies rapidly in the short to medium-term.

(c) Debtor countries should form a Debtor Cartel to repudiate loans and establish the basis for a more equitable and democratic framework to negotiate debt and aid exit mechanisms, as well as aid/debt trade-off mechanisms.

(d) Donor/creditor countries should use all aid to write off all loans to poor nations and create a zero debt-crisis development option: 'No Aid, No Debt.'

(e) Donor countries should reduce and eliminate trade barriers to manufactures of poor countries, to increase their external viability in the context of fair trade.

(f) New global mechanisms to redistribute financial resources from the richer to the poorer regions of the world, such as a global tax on currency transactions, should be developed under the UN system to replace current aid regimes.

(g) HIPC debt relief must be de-linked from the PRSP process. Real national ownership of poverty reduction frameworks can only happen if the threat of 'conditionality' by the IMF and the World Bank is removed from the backs of vulnerable governments. Linking debt relief to the preparation of the PRSP removes the 'autonomy' of countries to come up with a framework that clearly makes the connection between macroeconomic policies and poverty reduction goals. This requires time, research, and exhaustive consultation with broad sectors of their populations.

(h) The IMF Poverty Reduction and Growth Facility (PRGF formerly ESAF) should be abolished, since it is merely a financing facility paid for by bilateral donors to clear up the debts owed by HIPC governments to the IMF. The Fund can clear up debts owed to it through gold sales (revaluation process) rather than through voluntary contributions from bilateral donors. Bilateral resources going to the PRGF should instead go to the African Development Fund and the African Development Bank for the institution to foster African development.

(i) The African Development Bank needs to be strengthened and the role of the Economic Commission for Africa enhanced. The IMF and the World Bank must be reformed, so that they can give higher priority to Africa's development. They should not be used as debt collection agencies for the big creditor countries, but should have their roles restored in helping all the 182 of their member countries, not just the rich ones, in the pursuit of enlightened globalization. They also need to become more accountable both to their shareholders and to their clients, and to give Africa a stronger voice in their decision-making.

(j) The United Nations should establish a fair and transparent arbitration mechanism on debt. Such structures as the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, the Permanent Court of Arbitration (PCA) in The Hague and the United Nations Commission on International Trade Law could have their mandate expanded to include arbitration on debt and insolvency laws. In addition, UN specialized agencies have a core role to play in the ending of poverty. It is time to empower the U.N. Children's Fund (UNICEF), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the United Nations Development Programme (UNDP) and many others to do the job on the ground, country by country.

Ending notes

As was acknowledged in the New African Initiative, the limit of donor driven debt relief initiatives has now been reached. A new partnership in the international community is required to ensure that Africa removes itself from the dependency syndrome that the aid regime imposes. The Millennium Declaration was adopted by 189 Member Nations of the UN on September 18 2000. The Millennium Declaration outlines the signatory countries' commitment to achieving the Millennium Development Goals (MDGs). The MDGs include: (1) Eradicate extreme poverty and

hunger, (2) Achieve universal primary education, (3) Promote gender equality and empower women, (4) Reduce child mortality, (5) Improve maternal health, (6) Combat HIV/AIDS, malaria and other diseases, (7) Ensure environmental sustainability, and (8) Develop a global partnership for development. For more details about the MDGs, please visit www.un.org/millenniumgoals/index.html.

Most OECD countries have introduced a new system of national accounts which has replaced Gross National Product (GNP) with GNI. As GNI has generally been higher than GNP, ODA/GNI ratios are slightly lower than previously reported ODA/GNP ratios.

Official Development Assistance is what is often referred to as aid, of which at least 25 percent must be a grant. The promotion of economic development or welfare must be the main objective. It must go to a developing country as defined by the DAC

The Paris Club is an informal group of financial officials from 19 of the world's richest countries, which provides financial services such as debt restructuring, debt relief, and debt cancellation to indebted countries, and their creditors. Its members include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, the Netherlands, Norway, Russia, Spain, Sweden, Switzerland, the United Kingdom, and the United States. See the Commission for Africa, *Our Common Interest*, London: Penguin Books, 2005. The World Bank, *World Development Report, 2005*.

The Monterrey Consensus was the outcome of the 2002 Monterrey Conference, the United Nations International Conference on Financing for Development. It was adopted by Heads of State and Government on 22 March 2002. Over fifty Heads of State and two hundred Ministers of Finance, Foreign Affairs, Development and Trade participated in the event. Governments were joined by the Heads of the United Nations, the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO), prominent business and civil society leaders and other stakeholders. New development aid commitments from the United States and the European Union and other countries were made at the conference.

Countries also reached agreements on other issues, including debt relief, fighting corruption, and policy coherence. Since its adoption the Monterrey Consensus has become the major reference point for international development cooperation.

It should be noted that this is happening in a country where more than 80 million people live on less than US\$1 a day. See *The Reality of Aid 2002 Report, An Independent Review of Poverty Reduction and International Development Assistance, The Reality of Aid Project*, Edited by Judith Randel, Tony German and Deborah Ewing, Development Initiatives, IBON Foundation, Inc., Manila.

The Comprehensive Development Framework is an approach by which countries can achieve more effective poverty reduction. It emphasizes the interdependence of all elements of development - social, structural, human, governance, environmental, economic, and financial. It encompasses a set of principles to guide development and poverty reduction, including the provision of external assistance. The four CDF principles are:

- Long-term, holistic vision
- Country ownership
- Country-led partnership
- Results focus

The CDF is essentially a process: it is not a blueprint to be applied to all countries in a uniform manner. It is a new way of doing business, a tool to achieve greater development effectiveness in a world challenged by poverty and distress. In the short run, the CDF establishes mechanisms to bring people together and build consensus, forges stronger partnerships that allow for strategic selectivity, reduces wasteful competition, and emphasizes the achievement of concrete results. It will help donors become more selective in what they do. In the long run, the CDF enhances development effectiveness and contributes toward the central goal of poverty reduction and reaching agreed targets such as the Millennium Development Goals.

In terms of their principal defining characteristics, PRSPs: (a) Are summaries of comprehensive, long-term development plans drawn up in a participatory manner to reduce poverty, and including a diagnosis of the causes of pov-

erty, prioritization of public policies to reduce poverty, targets for selected intermediate output and outcome indicators, and monitoring and evaluation systems; (b) Are a requirement for debt relief under the enhanced HIPC Debt Initiative when endorsed by the IMF and the World Bank Executive; (c) Set out how money saved through debt relief and received from grants and soft loans will be spent on poverty reduction.

The Boards of the IMF and World Bank approve a country's PRSP before a lending programme is agreed. They would accept a PRSP on the basis of the coherence of the policy strategy, which is assessed in terms of its objectives and policy content, and would review the extent of governments' consultations with civil society and how governance issues are addressed. See the Summit documents – G8 Gleneagles 2005 on www.g8.gov.uk

Although the financing gap has been reduced by the renewed focus on aid targets and timetables, and the commitments made in 2005 to achieve the 0.7 percent target, the G8 countries are currently off-track to reach this target, and are failing on key steps to reform aid. The U.K is off-track to reach the 2010 European target of giving 0.56 percent of national income in aid, once debt relief is excluded. Ireland has already reneged on its 0.7 percent by 2007 commitment and pushed its target date to 2012. Japan, meanwhile, has effectively reneged on its \$10 billion commitment made at the G8 Gleneagles meeting for new aid money for Africa to 2010. As the countries furthest from the target, Germany, the US, and Italy must meet the lion's share of the G8 aid increase, yet are dragging their heels on their pledge.

The Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD) is a forum for consultation among 21 donor countries, together with the European Commission, on how to increase the level and effectiveness of aid flows to all aid recipient countries. The member countries are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden,

Switzerland, UK, and USA. DAC sets the definition and criteria for aid statistics internationally. See *The Reality of Aid Report 2006, Focus on Conflict, Security and Development Management Committee* The Reality of Aid, IBON Books Quezon Cit, Philippines, Zed Books, London
The Poverty Reduction and Growth Facility replace the Enhanced Structural Adjustment (Loan) Facility (ESAF) and is the name given to the IMF Loan Facilities to developing countries.

Notes

Action Aid, Real Aid, Making Technical Assistance Work, London, 2006

Charles-Antoine Hofmann, Les Roberts, Jeremy Shoham and Paul Harvey, Measuring the Impact of Humanitarian Aid: A review of Current practice, Humanitarian Policy Group, Overseas Development Institute, London, 2004

Commission for Africa , Our Common Interest, London: Penguin Books, 2005

DFID White Paper, Eliminating World Poverty, Making Governance Work for the Poor, London, 2006

Jeffrey D. Sachs, The End of Poverty, Economic Possibilities for Our Time, Penguin Books, 2006

Joseph Stiglitz, We have become rich countries of poor people, Financial Times, Friday September 8, 2006

Opening up the IMF club, International Herald Tribune, Friday, September 8, 2006

Oxfam, Oxfam Briefing Paper: The view from the summit – Gleneagles G8 one year on: 9 June 2006

Patrick Watt and Tom Sharman, Mission Unaccomplished, One Year on from Gleneagles, is the G8 hitting its targets on debt, trade and aid? Action Aid, June 2006

Steven Radelet, A Primer on Foreign Aid, Working Paper Number 92, Center for Global Development, July 2006.

The Reality of Aid Project, The Reality of Aid

2000, *An Independent Review of Poverty Reduction and Development Assistance, Focus on Basic Education Policy Implementation*, Edited by Judith, Tony German and Deborah Ewing, Development Initiatives, Earth scan Publications Ltd, London, 2000

The Reality of Aid Project, The Reality of Aid 2002 Report, An Independent Review of Poverty Reduction and International Development Assistance, Edited by Judith Randel, Tony German and Deborah Ewing, Development Initiatives, IBON Foundation, Inc., Manila.

The Reality of Aid Security and Development Management Committee, The Reality of Aid Report 2006, Focus on Conflict, IBON Books Quezon Cit, Philippines, Zed Books, London

The World Bank Group, World Development Report, 2005.

UNDP Human Development Reports 1999 - 2005, Background Papers and Indices from www.undp.org

United Nations, the Millennium Development Goals Report, New York, 2006

United Nations, the Millennium Project, Report of the Secretary-General, Investing in Development A Practical Plan to Achieve the Millennium Development Goals, New York, 2005

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Lawalley Cole has about thirty two years of progressively responsible experience in teaching, policy formulation and development planning, program design, program implementation, monitoring, research and evaluation, and other administrative areas in education. He was in charge of UNICEF's education portfolios in Gambia, Zambia, Mali and Burundi for 13 years. Mr. Cole is also the author of several practical and conceptual papers, which he edited, produced, and disseminated for annual reports in 2 UNICEF country offices. In Jan 1999, he was invited to Brussels to give his advice and opinions on international aid and education to a sub-committee of the European Parliament that was preparing a new convention between the European Union and the Africa-Caribbean-Pacific states (Lomé V). In addition to working closely with a number of colleagues from the UN Family and the World Bank, he successfully secured increased attention to addressing HIV/AIDS in Zambia in 1998 within a sector-wide program known as the Basic Education Sub-Sector Investment Program (BESSIP), while maintaining a clear definition of UNICEF's own role in the context of such a sectoral program. He has worked as Consultant with various organization and institute including the UNDP; UNICEF; INSTRAW; U.N; UNIFEM/OPS/UNDP; the Ford Foundation; and Government of The Gambia. He presently is the Education Program Officer of United Nations Children Fund in Burundi, managing the basic educational program.

THE SUCCESSFUL COLLABORATION BETWEEN THE GOVERNMENT OF SIERRA LEONE AND THE SPECIAL COURT FOR SIERRA LEONE

ALAN W. WHITE, PH.D.

On June 4, 2000 President Ahmad Tejan Kabbah of Sierra Leone formally requested the Secretary General of the United Nations to create a Special Court for Sierra Leone to prosecute those who bear the greatest responsibility for the crimes committed against the people of Sierra Leone during the decade-long civil war. In my view, this was one of the greatest accomplishments of the government of Sierra Leone aimed at aiding the people of Sierra Leone and the sub-Saharan region. The establishment of the Special Court allowed the people of Sierra Leone to legitimately seek redress against those individuals who committed horrific atrocities against the citizenry of Sierra Leone and re-establish the rule of law in a region that had not experienced the rule of law in decades, perhaps not since independence in the early 1960s.

President Kabbah recognized that justice was absolutely essential to the process of securing a lasting peace. After considering the matter, the UN Security Council reiterated that the situation in Sierra Leone constituted a threat to international peace and security, and acting under Chapter VII of the UN Charter, passed Resolution 1315 on August 14, 2000. That Resolution called on the UN Secretary General, Kofi Annan, to negotiate an agreement with the Government of Sierra Leone for the establishment of an independent criminal tribunal. This agreement was signed on January 16, 2002 and included the terms of the Statute of the Special Court as an annex.¹ In March 2002, the agreement was ratified by the Parliament of Sierra Leone. At the outset the Special Court would adopt the Rules of Evidence and Procedure used by the International Criminal Tribunal for Rwanda and would be subject to amendment by the judges.²

Although the Special Court was unique in

many ways, one of the most singular aspects of the court was the time frame in which it was expected to carry out its mandate. Although not governed by statute, it was expected that the court would complete its mandate within three years. This would prove to be a worthy, though unattainable, objective.

The court started to take shape on April 19, 2002 when Mr. David M. Crane was formally appointed by Mr. Kofi Annan as the Prosecutor and Mr. Robin Vincent as the Registrar. I was subsequently asked by Mr. Crane to serve as the Chief of Investigations. Both Mr. Crane and I were members of the Senior Executive Service at the United States Department of Defense Office of the Inspector General. We officially joined the Special Court on July 15, 2002. In preparation for our arrival in Sierra Leone I was asked to conduct a search to find a place to live and set up our office operations. On July 18, 2002 I arrived in Freetown, Sierra Leone and was invited to stay with Mr. Keith Biddle, the Inspector General of the Sierra Leone Police (SLP).

I had met with Mr. Biddle while attending a conference in New York City in June 2002. The conference addressed Peace, Security and the Development of Sierra Leone and I was very fortunate to have attended it and met with Mr. Biddle. During the conference we discussed the current state of affairs in Sierra Leone and the significant challenges I would encounter while working in a war torn country. Our discussions were fruitful, incredibly insightful, and assisted me in formulating my strategy to conduct operations in Sierra Leone.

In my initial discussions with Mr. Biddle I learned that most documentary and physical evidence that may have existed at the Criminal Investigations Division of the Sierra Leone Police was

destroyed during the invasion of Freetown in January of 1999. Consequently, the testimony of witnesses would be absolutely essential in the process of gathering evidence with which to prosecute those individuals most responsible for the conflict.

The three year time period allotted to carry out the court's mandate was dauntingly short, particularly in a war torn country with limited capacity to support such an endeavor. It would necessitate substantial cooperation with the Sierra Leonean government and the international community. An additional challenge was the highly diverse demographics of Sierra Leone, which had over eighteen different ethnic groups.

Although most of the people in Sierra Leone speak English, many speak Krio, a form of pidgin English combined with languages from the other various tribes, such as the Mende, Temne and Lemba.

I could not afford to make any missteps in establishing initial operations and therefore needed to make sure that I hired absolutely the right people for the job at the onset. This required that I hire people from Sierra Leone recommended by the SLP, who knew the conflict, could speak the necessary languages, knew those who perpetrated the crimes, and most importantly those who I and the people of Sierra Leone could trust. Mr. Biddle made it quite clear that there were only a handful of people that he trusted, and most of them were senior personnel who would be difficult to release to the court.

On July 20, 2002 Mr. Biddle made arrangements for me to meet with five of his senior officers, Tamba Gbekie, Morie Lengor, Thomas Lahun, Joseph Saffa, and one other officer. We had frank and open discussions about the jurisdiction

of the court, how I planned to conduct investigative operations in the country, and my plans to integrate national police into my operations. There was detailed discussion about the conflict and concern about the mandate and the temporal jurisdiction

date of November 30, 1996, which was linked to the Abidjan Peace Accord and not to the beginning of the war. All of these officers had lived through harrowing experiences throughout the entire civil war and recalled being targeted by the RUF during the invasion on January 6, 1999 to be killed. However, without hesitation they all agreed to join the

team and embark on a new path for Sierra Leone.

On August 14, 2002, Mr. Joseph Saffa of the SLP was hired as the first investigator, and together we began our investigations. The others joined later, once the investigations were officially underway. One of our initial successes was the investigation into the senior leadership of the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC). We were immediately successful in penetrating the inner circle of both organizations by turning insiders into cooperative witnesses. Written detailed accounts detailing the command and control structures of the organizations were obtained and vetted with other sources and witnesses.

We learned early on about the real intentions of the war. Make no mistake, this war had nothing to do with religion, ethnic or tribal issues, it was simply about greed and corruption. Charles Taylor and his army of thugs wanted to create a United States of West Africa under their control. His western education coupled with his knowl-



edge of the West African culture made his exploits prime for cultivation. Taylor wanted to rule all of West Africa in a sophisticated manner that would not inculcate the traditional tools of war in Africa. Rather, through the traditional western traits of greed, corruption and the use of violence and terrorism he imposed his will on the people of Africa.

Taylor did not employ the traditional techniques of war that are emblematic in Africa, such as exploiting tribal, religious, and ethnic divisions. Instead, he used sheer violence. This tactic worked until the international community and the Special Court said, “no more!” On March 7, 2003 we indicted Charles Taylor and ten other war criminals secretly. On June 4, 2003 we revealed his indictment, rightfully or wrongfully, and exposed him to the world. Everyone had known that it was only a matter of time before he was removed. He was a ruthless killer and human exploiter. We were able to show Charles Taylor and others like him that a new day was dawning in Sierra Leone. The rule of law was more powerful than the barrel of a gun.

The most important contribution that belies this incredible story is that the indictments could not have been possible without the courageous men of the Sierra Leone Police. It was said from the very beginning that they could not be trusted, yet for seven straight months these quiet, yet brave officers demonstrated the highest level of integrity and morals by working side-by-side with international staff secretly gathering evidence throughout the country. From August 2002 to March 2003 we interviewed over 600 witnesses and gathered evidence that would ultimately support the indictments of a sitting Head of State, a sitting Minister in Sierra Leone who oversaw the Sierra Leone Police, and other security personnel.

This was a monumental testament to the conviction of those professional and courageous police officers from Sierra Leone, in a country where there were no secrets, who proved everyone wrong. On March 10, 2003 we launched Operation Justice, a law enforcement operation that resulted in the simultaneous arrests of six individuals for war crimes in Sierra Leone, without incident. This was unprecedented. “Why didn’t I know?” asked Chief Hinga Norman during his arrest to one of

my investigators, a senior Sierra Leone Police Officer. My investigator looked Norman in the eye and said, “You didn’t need to know.” At the time, Chief Norman was arguably the most powerful man in Sierra Leone. In his capacity as the Chief of the CDF he oversaw 10,000 militiamen and as the Minister of Internal Affairs he oversaw the operations of the Sierra Leone Police which was comprised of over 8,000 men and women. For the first time in a long time, the rule of law was more powerful than any one individual in Sierra Leone.

“The most important contribution that belies this incredible story is that the indictments could not have been possible without the courageous men of the Sierra Leone Police.”

Lastly, one of the most important accomplishments of the Special Court and our legacy program was the creation of the Witness Management Unit within the Office of the Prosecutor. While most traditional law enforcement agencies are responsible for the handling of witnesses from the onset of investigations, through post-trial support (such as witness protection), under international organization models such as the ICTY, ICTR, and the Special Court, the Registrar is responsible for witness protection. I was aware that there were professional differences, and even jurisdiction issues between the OTP and OTR over witness related issues at other tribunals, and I knew that this had created problems for the witnesses.

Recognizing early on that most of our evidence would be generated from witness testimony, I knew that I needed to address this problem with the Registrar, Mr. Vincent, to ensure that the handling of witnesses between the OTP and the

OTR would be seamless. As a result I created a witness management unit that was headed up by an international member at the Royal Canadian Mounted Police and staffed by hand-picked Sierra Leone Police officers. The Witness Management Unit would be responsible for taking care of all the witnesses throughout the judicial process, including working side-by-side with the OTR Witness Protection and Victim Services Section.

Since many of the witnesses were from Sierra Leone and would remain in Sierra Leone after they testified it was imperative that we develop the capacity to protect these witnesses long after the court was gone. Consequently, it was vital that we train a special cadre of SLP officers to be able to adequately and properly manage the witnesses throughout the entire judicial process. I met with the new Inspector General, Brima Acha Kamara, and convinced him to provide me with twelve of his best police officers, to train in witness protection and witness management. The long-term goal was to extract the Witness Management Unit at the closure phase of the court and establish identical operations at the SLP Headquarters with the staff trained by the court. We later trained approximately 50 additional officers, men and women, to deploy throughout the country based on number of witnesses located in a particular area.

The training provided the officers with the technical skills needed to utilize computer designed database programs to manage witnesses. The database contained a comprehensive file on each witness. It included a digital photo, personal contact data, frequency of contacts, any monies paid to the witness, threat related data and other relevant information. This was a secure system that only the witness management personnel had access to for operational security.

This was one of the most successful collaborative efforts of the Special Court. Without witnesses, there would be no evidence, no cases, and certainly no trials. The successful operation of this program gave the people of Sierra Leone the confidence to testify and return to their villages without incident and carry on their lives. To date, over 300 witnesses have testified before the Special Court. Although a few wit-

nesses have been threatened, none have been injured or received bodily harm. Whenever we became aware of a threat, whether it was real or perceived, we immediately investigated the allegation and took action. It did not take long for the word to get out that the court and the SLP would not tolerate any threats or acts of intimidation.

The government continues to provide outstanding support to the Special Court and currently there are three trials underway in Freetown before two Trial Chambers. The trial of the three accused in the CDF case started in June 2004. The prosecution closed its case on July 14, 2005, having presented 75 witnesses. The defense opened its case on January 19, 2006. It is estimated that the trial proceedings in the CDF case will be completed by the end of 2006 with judgment, sentencing, and appeals completed during 2007.

The trial of the three accused in the AFRC case started in March 2005. The prosecution closed its case on November 21, 2005 after calling a total of 59 witnesses. The defense case started on June 5, 2006. It is estimated that the trial proceedings in the AFRC case will be completed by the end of 2006 with judgment, sentencing, and appeals completed during 2007.

The trial of the three accused in the RUF case started in July 2004. The prosecution closed its case on August 2, 2006 having presented 86 witnesses. It is estimated that trial proceedings in the RUF case will be completed by the end of 2007 with judgment, sentencing, and appeals completed during 2008.

A fourth trial, of Charles Taylor, the former President of Liberia, has a commencement date of April 2, 2007 in The Hague, and will be dealt with by Trial Chambers II. The Taylor trial is expected to take 18-24 months, from the start of the trial until judgment.³

In closing, I want to acknowledge the outstanding support provided by the government of Sierra Leone. In particular, I want to express my personal thanks to Mr. Biddle for his support, sacrifice, courage, and dedication. Without his direct involvement I could not have done my job. He remained on the job an additional year just to ensure the success of the investiga-

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tions and arrests of those involved. I also want to commend President Kabbah for his courage and his support as well as the men and women of the Sierra Leone Police Department that worked directly for me as well as those in the field that supported the work of the Special Court. The collaborative efforts between the government of Sierra Leone and the Special Court are unique, historic, and a success story that needed to be told.

Notes

1 Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone, signed on January 16, 2002.

2 This agreement was detailed in the Statute of the Special Court for Sierra Leone ratified by the Parliament of Sierra Leone in March, 2002.

3 As detailed in the Special Court for Sierra Leone Fact Sheet prepared on September, 2006.

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ACCESS TO JUSTICE AND THE JUSTICE SECTOR REFORM IN NIGERIA

DR. MUHAMMED TAWFIQ LADAN

Introduction

It is a paradox that Nigeria is a rich country inhabited by the poor. Her poverty profile in statistical figures, according to a recent study¹, indicates that Nigerian people live in one of the twenty poorest countries in the world. For instance, Gross Domestic Product (GDP) per capita in 1998 was estimated at US Dollars 130, compared with US Dollars 950 in 1980-85. In other words, poverty has been recently rapidly increasing rather than decreasing. The report has also revealed that two-thirds of the population (66 million) lived below poverty line in 1996, compared to one third (18.3 million) in 1980. According to its analysis, per capita income at US Dollars 310 is very low for a resource rich country like Nigeria. It also states that the average GDP for Sub-Saharan Africa (excluding South Africa) is US Dollars 315, meaning that Nigeria is lagging behind even the poorest African countries, which do not have the kind of resources she has.

Other figures given in the report of the above mentioned study show that life expectancy at 50 years is two years less than the rest of Sub-Saharan Africa and this is continuing to decline because of the scourge of HIV-AIDS; 70 percent of rural households have no access to sanitation; and adult literacy averages 56 percent. As for all school age children one third of them did not enroll in primary school in 1996. Finally, 64 percent of Nigeria's poor and 85 percent of the extreme poor live in rural areas with 35 of Nigeria's 36 states experiencing poverty levels above 50 percent. This is really a gloomy picture of Nigeria as a poor state.² Nigerians deserve better governance than what they have been getting from their political leaders.

In 2004, Nigeria introduced the National Economic Empowerment and Develop-

ment Strategy (NEEDS) within which greater transparency is introduced into the conduct of government business. This is achieved through the institutionalization of the Budget Due Process, the war against corruption, which has been intensified, and greater fiscal prudence and the introduction of budget discipline, among many other measures that are yielding positive results.³

The principal development objective of government, as emphasized in the NEEDS document, is to reduce poverty along with associated problems of food security and hunger. Findings in 2004 show that poverty is more acute in rural areas and that some geo-political zones are particularly harder hit than others by the phenomenon. Unemployment is also a recurring issue, and over 70 percent of the unemployed are relatively unskilled people between the ages of 13-25 years. The current policy environment and the strong political will to implement pro-poor programs raise some hope about the likelihood of achieving the Millennium Development Goals (MDGs) by 2015.⁴

As result of the improvement in management of the economy, the growth rate of GDP has averaged 8.2 percent between 2003 and 2004 against the average annual growth rate of 3.5 percent in the last decade. For the first time in a decade, therefore, the growth rate of GDP has exceeded the rate of growth of population. The growth of the non-oil sector in 2004 was 7.5 percent as against 3.3 percent in the oil sector. This is the foreseen result from the new policy thrust of the Government.⁵

The growing awareness and recognition on the part of African governments, donor agencies/development partners⁶, and Civil Society Groups, that poor people, particularly women, the powerless and the disadvantaged, are the most vulnerable to all forms of crime and discrimination; and

that in very many cases, formal justice systems fail to protect them, is a step in the right direction. This has recently necessitated the need for African governments to develop the capacity to ensure safety, security and access to justice for all.⁷

The importance of justice systems for improving the lives of poor people by ensuring that everybody has access to systems which dispense justice fairly, speedily and without discrimination cannot be over-emphasized.

Failure of states to provide citizens with protection from crime and access to justice impedes sustainable development.⁸ All people have a right to go about their lives in peace, free to make the most of their opportunities. They can only do so if the institutions of justice and law and order protect them in their daily lives.⁹

States with poorly functioning legal systems and poor crime control mechanisms are unattractive to investors, so economic growth also suffers.¹⁰

This paper contends that in developing countries like Nigeria the law is often discriminatory¹¹ and legal processes are expensive, slow and complex. The result is that people, and particularly poor and disadvantaged people, have inadequate and unequal access to justice through the formal legal system. For these reasons they tend to rely much more on African Customary Justice Systems, but these can be discriminatory. Improving access to justice requires that both formal and customary systems be made to work justly and equitably.¹² It also means more than reforming legal procedures. It can also mean law reform, making courts more user friendly, improving African Customary Systems, and improving the treatment of offenders.¹³

It is against this background that this paper seeks to realize the following objectives:

1. To underscore the importance of justice sector reform for improving the quality of lives of poor and disadvantaged people in Nigeria;
2. To examine the role/contribution of development partners/donor agencies in realizing the objectives of accessible justice, safety and security strategies, identified by developing countries like Nigeria as priorities within the poverty reduction strategy process.

3. To examine critically the wider challenges of legal pluralism, poverty and corruption in Nigeria;
4. To conclude with viable options for Nigeria.

This paper is therefore divided into four broad parts:

1. Access to Justice and Justice Sector reform: paradigm shift in Donor Policy and Practice in Africa;
2. Nigerian-led initiatives in Justice Sector Reform: background and on going activities;
3. Wider challenges of poverty, corruption and legal pluralism in Nigeria;
4. Conclusion and recommendations.

I. Access to Justice and Justice Sector Reform: Paradigm Shift in Donor Policy and Practice

This part of the paper seeks to clarify briefly the key terms: “access to justice” and “justice sector,” and to examine the rationale behind the paradigm shift in Donor Policy and Practice to justice sector reform in Africa.

1.1 Access to Justice and Justice Sector

The term ‘access to justice’ refers to the ability of people in need of help. To find effective solutions available from justice systems which are accessible, affordable, comprehensible to ordinary people, which dispense justice fairly, speedily and without discrimination, fear or favour, and with a greater role for alternative dispute resolution.¹⁴

The term ‘access to justice’ refers to judicial and administrative remedies and procedures available to a person (natural or juristic) aggrieved or likely to be aggrieved by an issue. It refers also to a fair and equitable legal framework that protects human rights and ensures delivery of justice.

Without effective access to justice there is no effective legal protection of human rights. That is why the legislatures or parliaments, governments and courts of every country have a positive duty to translate the ideal of effective access to justice into practical reality. Effective ac-

cess is not just an optional extra or a luxury of affluent and economically advanced societies. Everyone, everywhere, should enjoy the equal protection of law if there is to be justice for all.¹⁵

“The importance of justice systems for improving the lives of poor people by ensuring that everybody has access to systems which dispense justice fairly, speedily and without discrimination cannot be over-emphasized.”

In his recent report on the English civil justice system, *The Master of the Rolls*, Lord Woolf, identified a number of principles which the system should meet in order to ensure access to justice. The justice system should, he wrote, “(a) be just in the result it delivers; (b) be fair in the way it treats litigants; (c) offer appropriate procedures at a reasonable cost; (d) deal with cases with reasonable speed; (e) understandable to those who use it; (f) be responsive to the needs of those who use it; (g) provide as much certainty as the nature of the particular case allows; and (h) be effective, adequately resourced and organized.”¹⁶

Those principles of access to justice are of general application to all systems of justice, both civil and criminal.

The term justice sector is used here in a broad sense, comprising not just the judiciary, lawyers, and justice and interior ministries, but also police, prosecutors, prisons system, human rights bodies, non-state mechanisms (e.g. traditional chiefs and traditional systems of justice) and civil society organizations involved in justice work.¹⁷

1.2 Paradigm shift in Donor Policy and Practice to Justice Sector Reform in Africa.

In an overview of justice sector reform aid in Africa, Laure-Helene Piron¹⁸ indicates that Donor assistance to promote justice sector reform in sub-Saharan Africa has increased significantly over the last ten years, from an estimate U.S. \$17.7 million in 1994 to over \$110 million in 2002. As total aid commitments to the region remained stable during the period, this represents a shift in priorities toward legal and judicial reform, reflecting both an acknowledgement of Africa-specific developments – notably democratization and the prevalence of violent conflicts – as well as increasing interest in justice sector work globally.

Donor support for justice sector reform changed focus from law reform to the rule of law with the end of the Cold war and the growing trend toward multi-party democracy across the continent in the late 1980s and early 1990s. The new approach included support for domestic civil society organizations, which demand better justice, monitor human rights, and provide legal assistance.

Further, Piron examines how the new poverty reduction agenda and legal reform was justified in 2000 when donors drew on studies to demonstrate the importance of functioning, fair, and accessible justice institutions in combating poverty. In assessing the new agenda in practice, Piron argues that the fundamental principle of the current “aid effectiveness” agenda is that donors should promote domestic leadership and ownership of reforms. Finally, Piron identifies the following five key challenges to improve donor support to justice sector reform in Africa: 1) Sustainable interventions; 2) Adopting a sectoral approach; 3) Understanding the context for intended reforms; 4) Involving non-state actors by improving linkages between the formal and traditional or customary systems; 5) Improving donor habits and incentives.¹⁹

II. Justice Sector Reform: Nigerian Led Initiatives and the Role of Donor Agencies

2.1 Background

In the aftermath of Nigeria’s transition from military dictatorship to civilian rule and restoration of democracy, the newly elected authorities of Nigeria requested donor assistance in their quest to reinstate

the rule of law and improve the functioning and performance of Nigerian legal and judicial systems. Between May 1999 and June 2000, Nigerian justice sector officials have been attempting to restore the credibility of Nigerian institutions (including legal and judicial institutions), which had been seriously undermined under military rule. The judicial branch, along with the legislative branch of government, has asserted its right to independence, including budgetary and operational independence. A number of initiatives have been taken or introduced that could have a positive impact on justice sector performance. These include a proposed presidential panel on judicial and legal reform (discussed in June 2000 at a meeting between the President and human rights NGOs), activities planned under the ongoing Economic Management Capacity Building Programme (EMCAP), a five-year strategic plan for reform of the Nigerian police, prisons decongestion, penal and prisons service reform, a national constitutional review process, and a number of innovative initiatives taken by legal and judicial officials at the state level.²⁰

Meanwhile, Nigerian civil society organizations have been active in an informal process of developing a national justice sector agenda. A variety of Nigerian non-governmental organizations have engaged both within Nigeria and with donors about reform and improvement of the justice sector. While the NGOs have not yet produced a unified justice sector improvement strategy, they have asserted their interest in doing so and the participation of the formulation of a national plan. There have been numerous conferences and both public and private meetings organized by these organizations, in Nigeria and abroad. The joint donor mission contributed to this consultation process through roundtables organized by the Human Rights Law Service (HURILAWS) in Lagos, Abuja, Kaduna, and Enugu in June 2000. A wide range of civil society organizations, legal practitioners, judges and other officials attended. These roundtables resulted in a report prepared by HURILAWS titled "Legal and Justice Sector Reform in Nigeria", and a set of recommended next steps, including a comprehensive literature review of the legal and judicial systems; support for tech-

nical resources (computers, internet access, etc.); a prison decongestion project; engagement of the private sector in justice sector reform; support for NGO capacity to develop legislation; and collaboration with the Federal Attorney General on the President's proposed judicial/legal reform panel.²¹

2.2 The Role of Donor Agencies in Reforming the Justice Sector in Nigeria.

It was against the above mentioned background that a joint-donor assessment mission on the Nigerian Justice Sector comprised of the European Union (EU), the UK Department for International Development (DFID), the US Agency for International Development (USAID), the United Nations Development Programme (UNDP), and the World Bank (WB) visited Nigeria from June 20 through June 30, 2000.

The purpose of the joint donors' mission was to foster a coordinated approach and a common understanding of issues affecting the Nigerian Justice Sector among donor agencies providing developing assistance. Coordinated donor action in the rule of law and access to justice field in Nigeria will have several beneficial effects: It will allow donors to avoid unnecessary duplication of efforts in programming; enable the optimal use of resources, efficiencies of scale and the benefits of mobilizing respective comparative advantages and interests; and minimize the burden on Nigerian officials of dealing repeatedly with multitude of donor representatives.

The joint donor assessment mission revealed the following core findings and possible areas of support as well as positive initial factors at play in Nigeria that will contribute to a successful reform process.²²

2.2.1 Core Findings

Existing institutions in the justice sector do not, by and large, perform the functions they are designed to fulfill. This finding applies mainly to the police, the lower courts, the legal aid system and the prison system. These are the institutions which impact mainly on the poor and vulnerable.

The DFID mission found that people living in poverty do not get the quality of ac-

cess to justice from the justice system they need and deserve, nor do they benefit from the form of safety the state is expected to provide through its security institutions, such as the police.

The key constraints preventing poor people from accessing safety, security and justice are found both within the formal justice system and outside of it. The combined result of the existing constraints is the public's fear and mistrust of the system and its institutions. If they do try to use it, access is very difficult. The situation is compounded by the impunity of those involved in malpractice or abuse of the system, and a high tolerance of violence in Nigerian society which leads people to take the law into their own hands (eg through vigilante groups) when the justice system is seen to fail.

2.2.2 Possible areas of support ²³

In light of the key constraints currently faced by poor people, the following aspects were identified as central to support by DFID to enhance safety, security and access to justice for the poor in Nigeria.

- opening up the justice sector in Nigeria to current thinking and best practice – within the country, elsewhere in Africa, and in other Federal systems;
- providing support to build constituencies for reform – including for example, at different levels (state and federal), multi-agency government, civil society constituencies, or a combination of both, complemented by support on strategy planning to government institutions interested in reform and new approaches, and possible support to build capacity in some of the leading justice sector CSO's;
- facilitating inter-agency working on increasing access to safety, security and justice in particular for the poor at state level, or on sub-sectoral issues (eg high remand levels) at Federal level;
- support to small scale pilots at State level to demonstrate successful alternative approaches either within the state or Federal level;
- research on issues central to poor peoples access to safety, security and access to justice, so that interventions are formulated according to local needs – including perspectives of poor users of the system as well as by partner institutions in

focal states.

An inception period could begin support for these components. In DFID focal states this would enable a clearer focus on local needs and facilities a flexible response to local conditions. At the Federal level, an inception phase could facilitate discussion and debate, and move forward a Nigerian agenda of improving access to safety, security and justice. The inception phase would also allow additional research and data to inform the decisions regarding longer-term DFID support to the sector (eg on poor people's perceptions of the justice system, and on the impact of the introduction of criminal sharia law).

Below are the key themes which have emerged from DFID research and consultations with Nigerian stakeholders, and provides examples of the kinds of activities which might be involved:

Purpose:

To enhance access to, and the quality of, safety and justice in Nigeria.

Theme 1:

Support to the development of a Nigeria-led process for justice sector reform.

Theme 2:

Improved management and operation of justice sector institutions.

Theme 3:

Strengthened mechanisms to improve poor people's safety and security.

Theme 4:

Improved access to justice institutions and services for poor people.

Theme 5:

Synthesis and dissemination of lessons and approaches.

2.2.3 Positive initial factors

For justice sector assistance in Nigeria to succeed, it will require substantial and enthusiastic Nigerian participation and a full sense of Nigerian "ownership." Despite the many challenges facing the Nigerian justice sector, it is clear from interviews and various written sources that there are a number of positive factors at play in Nigeria today that will contribute to a successful reform process.

While political will is intangible and diffi-

cult to gauge, the unanimous enthusiasms of all the major governmental and non-governmental actors to accomplish justice sector reform is remarkable. The President himself has shown great interest in improvement in the security and justice sector by explicitly requesting donor assistance in this sector and has called for the establishment of a panel on the administration of justice consisting of senior officials, to help formulate a national justice strategy. Senior justice sector officials have also shown their resolve. Senior members of the judiciary recognize the need for a complete overhaul of the justice system and have requested for substantial donor assistance. Senior justice official at the state level, including both judges and prosecutors, agree.

In addition to government enthusiasms, justice sector reform will be aided by the fact that numerous articulate and committed non-governmental organizations are engaged in the national dialogue on justice sector improvement.

A very engaged civil society is playing the important role of questioning assumptions, expressing popular expectations, proposing a variety of alternative approaches to reform and improvement, and making the debate on such subjects a truly public debate.

Government and NGO officials at both the state and federal levels are energetic and impatient for reform and improvement. Many are initiating changes, and appear willing, at least in some cases, to risk testing their innovations in the court of public opinion. Given this political will and momentum, the joint donor team agreed that this period is promising in terms of the likelihood of successful reform and improvement. Assistance should be directed toward the most dynamic and promising initiatives, particularly at the state level. Donors should also support the develop-

ment of a national justice sector reform strategy.²⁴

2.2.4 Nigerian-led Initiatives²⁵

In order to maximize Nigerian “ownership” of justice sector reform, it is important to identify and build upon the best Nigerian initiatives in this sensitive area. Some of the most notable include the following:

a) Formulation of a judicial/legal reform program:²⁶

The joint donor mission team took note of efforts of Nigerian authorities since March 2000, aimed at organizing a participatory stakeholders conference for the purpose of formulating a comprehensive legal and judicial reform program. The team was also informed of the President’s recent meeting with key human rights advocates, at which meeting he pledged to establish a judicial/legal reform panel entrusted to move the national reform process forward. The President has

asked the Federal Attorney General and Minister of Justice to coordinate the panel. Bringing judiciary leaders into this panel will be vital to its success. Depending on its mandate and composition, the panel may be able to play a leading role in the development of a national sector reform strategy.

b) Five year strategic plan for police reorientation:

In August 1999, a strategic planning process for the reorientation of the police was initiated. A draft strategic plan is under consideration by the Ministry of Police Affairs and the Inspector General of the Police. President Obasanjo has endorsed the strategic planning process. A bill is in the National Assembly to create a Police service Commission, which would strengthened the accountability of the police. A network of Nigerian civil society organi-



zations (and including the National Human Rights Commission) has also recently been created to work with the police and assist the reform process.

c) Prison and Penal Reform:

The Nigerian Prisons Service has submitted proposals for a second phase of reform, including the establishment of a Prisons Service Commission. In July 2001, the prison service was granted self-accounting status. The Prisons Service has also been working with civil society organizations to improve treatment of prisoners and provide human rights training for prison officials (in particular with PRAWA – Prisons Rehabilitation and Welfare Action).

In area of penal reform, a national conference held in Abuja in February 2000 led to the establishment of a Working Group on Alternatives to Imprisonment to review penal policy, advocate for greater use of fines and probation, and develop a sentencing manual.

d) Legal aid initiative

On June 22, 2000, the Legal Resources Consortium held a forum on transforming the provision of legal aid services in Nigeria. The forum discussed the establishment of an effective legal aid fund, the creation of a permanent legal aid practitioner's forum and mechanisms to encourage private legal practitioners to take up legal aid cases.

e) State-Level initiatives

Lagos State has established a "Citizens' Mediation Center" for people who cannot afford to go to the formal courts. According to the Attorney General, more cases are now being held in the mediation center than in the courts themselves because they are resolved more rapidly there and at a lower cost. Other innovations of the Lagos State Attorney General include an Office of the Public Defender, which provides free legal services for the poor staffed by ten full-time attorneys. There is also a Human Rights Protection Unit and a Consumer Protection Unit. All are under the newly created "Directorate of Citizens Rights."

The Chief Judges of Kaduna and Enugu States, also interviewed during the joint assessment

mission, identified a number of problems faced by the judiciary in the states. Those that came out forcefully in the discussion were: inadequate remuneration and poor working conditions of officers of the judiciary, lack of modern technology and the problem of using longhand to record proceedings in the courts, need for reform of rules of procedure in the courts and needs for training for budgeting officers for effective management of the judiciary.

2.2.5 Reform Initiatives

The capacity of the relevant government agencies has been enhanced by donor agencies, particularly DFID and USAID, resulting in the following reform initiatives, on-going activities and output:

a) Safety, Security, Access to Justice and Non-Discrimination:

Between 2001-2006 the following reform measures have been put in place in Nigeria.

National Economic Empowerment and Development Strategy (Needs): 2004 National Planning Commission, Abuja, pp. 95-99.

Chapter 9 of the NEEDS document under review is titled: "Improving security and the Administration of Justice." The overall policy thrust here is that NEEDS seeks to increase the level of security of life and property, reduce uncertainty, and improve the confidence in Nigeria by both Nigerians and investors. The strategy recognizes the role society must play in enhancing security by imbuing the right values and attitude towards safeguarding life and property. It focuses on growing the economy to reduce unemployment; providing safety nets for vulnerable groups, including children; and fighting corruption and drug abuse. It pays attention to training and equipping security institutions and agencies (judiciary, police, prisons, immigration, customs, and other organs) charged with guaranteeing internal security. An important dimension of the NEEDS policy is achieving a paradigm shift and change of attitude of some of those involved in security matters to see themselves as public servants who should deliver high-quality services to their customers. Corrupt practices among secu-

rity operatives will be vigorously fought; corrupt officials will not only be weeded out but severely punished. The quality of services delivered will be closely monitored as part of the ongoing reforms.

Society, schools, religious institutions, and families all have key roles to play in creating a disciplined and law-abiding citizenry with the right values. Teachers, parents, and people in positions of authority must recognize that children and youths see them as role models. They must provide young people with the right orientation and advise, especially with respect to using violence to pursue their rights or seek redress.

NEEDS plans to increase national security by increasing the effectiveness of the police, reforming the nation's prisons, improving the judicial system, promoting and protecting human rights, increasing women's rights, and ensuring the rights of people living with HIV/AIDS.

Security, Justice and Growth: Nigeria 2005: British Council/DFID, 6 pages.

The pro-poor and gender based 2001-7 Federal Government of Nigeria/DFID Access to Justice, Security and Growth project with Jigawa, Ekiti, Benue, Enugu, Kano and Lagos States as focal states. DFID-Nigeria's Security, Justice and Growth programme (SJG) strives to improve access to, and the quality of, safety, security and justice for poor people and their livelihoods.

Through the SJG Programme, the United Kingdom's Department for International Development (DFID) and Nigerian partners are working to realize the values, principles and goals contained in the United Nations Millennium Summit Declaration: peace, security, development, poverty eradication, human rights, democracy, good governance, protecting the vulnerable and meeting the special needs of Africa.

The SJG Programme is organized into three components: security, access to justice and growth. It is rights-based; working to enhance all rights, but especially equality rights (gender); and is supporting those combating corruption. It promotes interagency and state civil society co-operation and sector-wide activities. It works at the federal level to support the National Economic Empow-

erment and Development Strategy (NEEDS) and, in specific states, the state equivalent (SEEDS).

The security component supports:

- the transformation of the culture and organization of the Nigeria Police by the introduction of community-based policing;
- improved service provision to communities by the Nigeria Police through the introduction of community-based policing;
- improved service provision to communities by informal policy structures and partnerships in selected states;
- improved prevention, resolution and management of conflict by formal and informal systems.

The access to justice component supports:

- strengthening legislative and policy frameworks and funding at federal and state levels;
- increasing awareness among vulnerable groups of their rights
- strengthening the capacity of the justice system (formal and informal) to address rights;
- increased capacity for individuals to obtain redress for the breach of their rights.

The growth component supports:

- strengthening of the legal environment for the private sector to enable pro-poor growth;
- streamline of the regulatory environment to assist pro-poor growth;
- strengthening of institution to combat corruption.

Begun in 2002, the SJG Programme has contributed to the achieving of the Millennium Development Goals:

- by promoting strong partnerships among governments, civil society organizations and the private sector in pursuit of security, justice, the rule of law, development and poverty eradication;
- by promoting gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease;
- by promoting a legal and regulatory framework that encourages non-oil economic growth to give young people a real chance to find decent and productive work rather than become lost to a life of crime.

Report on the Draft Bill on Elimination of Violence in Society April 2006: Federal Ministry of Justice, British Council/DFID, Abuja, pp. 63.

The Draft Elimination of Violence in Society Bill is an outcome of the work of the national committee set up in September 2005 by the Attorney-General/Minister of Justice and charged with the responsibility of producing this draft bill. The purpose of this bill is to provide comprehensive legal framework that will provide the much needed institutional mechanism for effectively curbing violence in our society. It is a fact that violence of all sorts has become endemic and institutionalized in Nigeria today with enormous consequences for security of persons, property, family life, public peace and indeed national security. Violence results in cumulative breaches of the rights of those affected including rights to life, peace, bodily integrity and personal security. Violence affects all-men, women, children, elderly, and persons with disability in the private and public spaces and in peace and conflict situations and has been recognized internationally as the most pervasive form of violation of human rights.

This bill on Elimination of Violence is rich in contents and reach, as it expansively covers in its sixteen chapters most recognizable forms and manifestations of violence and emerging forms of violence. We believe that it is the obligation of government to enact laws that will provide maximum protection and effective remedies to all victims of violence and to prohibit, prevent and punish all forms of violence when and wherever it manifests in Nigerian society.

Report on the Draft Bill on Abolition of All Forms of Discrimination Against Women in Nigeria and Other Related Matters, 2006: Federal Ministry of Justice, Abuja, pp. 13

This thirteen page document is the result of the work of the national committee set up by the Attorney-General/Minister of Justice on 25th August 2005 to review discriminatory laws against women in Nigeria. The draft bill is for an Act to abolish all forms of discrimination against women in Nigeria and other related matters. It contains 36 sections structured into six parts. It provides compre-

hensively for the fundamental rights of women in civil, political, cultural, social and economic contexts, as well as equality in marriage, divorce, succession, maintenance, education, health and family life in general. It prohibits also all forms of discrimination, inequality and gender-based violence against women and the girl-child.

This important draft bill is consistent with the policy thrust of NEEDS and Nigeria's international and regional obligations to promote and protect women's human rights and gender equality in our society.

2005 NCWD/UNICEF/World Bank-IDF project on discriminatory laws etc.

The completed 2005 NCWD/UNICEF/World Bank-IDF project on the comprehensive compilation, review, and gender analysis of the constitution, national and state statutes and regulations, local Government bye-laws, customary and religious laws, policies and practices, and court decisions relating to the statuses of women and children, applicable in Nigeria.

When the above mentioned draft legislations are passed into laws, they will hopefully increase poor/rural people, especially women's access to justice and judicial capacity to respond favourably to women's rights to non-discrimination and to equality before the law.

Presidential Commission on the Reform of Justice Sector, 2006.

The March 16, 2006, seven-member Presidential Commission on the Reform of the Administration of Justice inaugurated by President Obasanjo, is charged with the responsibility of developing a strategic plan for the reform of the administration of Justice sector in Nigeria; proposing modalities for the efficient coordination and functioning of the various agencies of the Justice system and evolving a national crime prevention strategy; developing a legislative framework for the protection of the rights of victims of crime and human rights violations, especially women and children; etc.

b) Crime and Administration of Criminal Justice

Between 2001-2006 the following reform measures have been put in place:

Support to the Economic and Financial Crimes Commission (EFCC) and the Nigerian Judiciary.

The European Commission funded over three years to the tune of \$34 million US dollars to enhance the capacity of EFCC and Financial Intelligence Unit to effectively detect, investigate and prosecute economic and financial crimes and the judiciary's ability to effectively prosecute these crimes in court.

As of September 11, 2006, the EFCC says its fight against corruption has yielded results of no fewer than 1,000 prosecutions of Nigerian corruption cases in two years. The commission had also ensured the conviction of 82 persons for corrupt practices. The commission recovered assets worth more than five billion dollars and more than 500 billion Naira recovered from fraudulent persons and others. More than 200 million Naira were recovered from the failed banks. Thirty billion Naira were recovered as unpaid custom duties, and 242 million dollars from the celebrated Brazillian Bank scam.

Administration of Criminal Justice Bill, 2005, PP. 177.

The bill under review is for an act to make provision for speedy and efficient administration of criminal justice in all courts and by all agencies in Nigeria. This 177 page draft bill is qualitatively structured into 21 parts and has four schedules forming part of it. It contains matters: that are preliminary and definitive; trial of all offences; of general authority to issue warrants of arrest; relating to escape and re-arrest, prevention of offences, public nuisance, attachment where a person disobeys summons or warrant, provisions relating to criminal trials and inquiries in general, place of trial and inquiry, powers of Attorney-General, institutions of proceedings; relating to search warrants, provisions as to bail and recognisances generally, provisions relating to property and persons, persons of unsound mind, remand and other interlocutory proceedings, presentation of cases by prosecution and defence, provisions relating to sentences of death, imprisonment and fine, summary proceedings in perjury, trials generally, sentencing generally other than capital punishment/sentence, procedure for trying child offenders and matters relating to proba-

tion and non-custodial sentencing alternatives.

Assessment of the Integrity and Capacity of the Justice System in Three Nigerian States: Technical Assessment Report, January 2006: UNODC, Vienna, Austria in collaboration with Nials, Lagos: pp. 163

The main thrusts and objectives of the 163 page technical assessment report were to have a full understanding of the State of integrity and capacity of the various justice sector institutions in the three pilot states of Lagos, Delta and Borno. More specifically, the study assessed Nigeria's current levels of access to justice, timeliness of justice delivery, independence and impartiality of the judiciary, and corruption within the justice sector, as well as public trust in the judiciary. It also explored the institutional and legal framework to fight corruption and conducted a case audit, focusing in particular on the potential abuse of procedural or substantive discretion.

Based on the key findings, the report presents detailed policy recommendations for judicial reform measures aimed at increasing accessibility to the courts, making justice delivery more efficient, enhancing the public's trust in the justice system, increasing the independence, fairness and impartiality of the judiciary, and curbing corruption within the justice sector.

c) Prison Reform and Decongestion in Nigeria

Between 2001-2006 the following reform measures have been put in place:

Report of the National Working Group on Prison Reforms and Decongestion in Nigeria 2005, Federal Ministry of Justice, Abuja, pp. 336

This 336 page report contains very useful findings and recommendations of the committee set up by the Attorney-General/Minister of Justice on 10 February 2004 to provide a coordinated and coherent response to the problems identified with the prisons among key government agencies, institutions and the civil society.

The rationale, structure and contents of the report have been professionally and comprehensively put together and analyzed. More importantly are the core findings of the report in terms

of: structure of the institutions visited, facilities audited, welfare of inmates and prison officials examined; legal representation of inmates, the plight of awaiting trial inmates, prisoners above 60 years, children, nursing/pregnant mothers, lunatics, sick and prisoners who committed minor offences were carefully and extensively reviewed; the issue of unavailability of prosecution witness or investigation police officers, worst cases and challenges were also critically examined. Based on the findings detailed in the report, major and specific recommendations as well as urgent interventions required were made. The report was equally enriched by 24 annexes and analysis of statistical data on the volume, trend and challenges in prison reforms and decongestion exercises in Nigeria.

Assisting the Process of Prison Reform in Nigeria: Report of the UNODC Fact Finding Mission, 2005, Vienna, Austria, pp. 36.

This 36 page report confirmed the earlier findings that one of the biggest challenges facing the prison system in Nigeria is the number of awaiting trial prisoners, which constitute 64 percent of those incarcerated, many of whom have been imprisoned for several years. This is the result of a number of factors, although an examination of the data on awaiting trial prisoners suggests that two particular elements should be highlighted. First, that the majority of awaiting trial prisoners are armed robbery suspects, a capital crime which is not bailable. Second, that on application from the police, magistrates who have no jurisdiction to hear capital offences such as robbery, confine suspects to prison on the basis of a "holding charge" while the police investigation is underway. The latter has now been ruled as unconstitutional by the Court of Appeal although the practice still apparently continues nationwide. Investigations and prosecutions are seldom effectively pursued or completed in a reasonable space of time with a subsequent increase in the number of awaiting trial prisoners.

A key challenge to initiating a programme of assistance in such an environment is that the scale of the task is daunting within the context of limited resources. Given this, those areas identified for possible technical assistance should be

those which will have the widest possible impact across the penal system and act as critical levers for an overall programme of prison reform.

UNODC, as the custodian of the UN Standard Minimum Rules for the Treatment of Prisoners is ideally placed to make such interventions. The knowledge of the Standard Minimum Rules in Nigeria is high due to the work of several NGOs and UNODC could be an effective partner to the Nigerian Prison Service in both leveraging and assisting in any process of reform.

The Draft Prisons Bill, 1983: Nigerian Law Reform Commission, Lagos, pp. 61

The Draft Bill is designed to update the law on prison as well as to implement certain proposals aimed at the improvement of both the organization and the image of the Nigerian Prisons Service. Because of the considerable amount of additional provisions and alterations required to be made in the Prisons Act in order to achieve our ends, it was considered expedient to entirely replace the act with a new one instead of resorting to amending legislation. The bill is however based on the Prisons Act and retains many of the provisions of the Act. In several cases, the necessary amendments have been embodied in the retained provisions.

The highlights of the bill are however those new provisions which seek to implement the proposals for reform. There is for instance the new provision for the classification of prisons which is aimed at ensuring the separation of different classes of prisoners on the basis of sex, offence types, etc. It was felt that given the current trend in the country and the need to prevent the contamination of persons who would otherwise turn out to be useful citizens, it would be worthwhile to distinguish a Prison per se (in which convicted persons are to be incarcerated) from a Detention Centre (to contain persons awaiting trial, having been formally arraigned before a court of law). This leaves us with a Police Custody which should continue to confine only arrested persons who have not been formally charged to court.

III. Wider Challenges in the Justice Sector Reform

The reform of law and order and justice systems is only possible if governments-and the public at large - accept that reform is necessary and important. This will require debate on these issues. Such debate should be led within countries. But the international development community has a role to play in facilitating the dialogue and supporting civic awareness programs, for example on penal reform.

Another related challenge is the chronic under-resourcing typically experienced by this sector. Affordable strategies to address these problems would be facilitated by effective systems relating budgetary allocations, and donor support, to sector reforms.²⁷

An effective judiciary requires freedom from political interference to ensure impartiality in the delivery of judicial decisions. In some countries political patronage in judicial appointments and interference in judicial proceedings is a problem. Measures to buttress criteria for the selection, promotion and removal of judges administered by an independent body; professionalism in the judiciary.

Another serious challenge is to root out corruption in this sector which is often worse than in other areas. In this regard, judicial independence can also be abused in order to deter investigation and action. Corruption is a denial of justice. Where it is prevalent, the integrity and impartiality and the whole legal system is brought into disrepute. Commitment by the heads of the government, the police and the judiciary is essential to combat corruption.²⁸ Possible actions include:

- improving pay and conditions
- strengthening the transparency and accountability of the courts and police through court users committees, lay visitor scheme, etc.
- establishing and strengthening oversight mechanisms such as police complaints commissions
- removing responsibility for court administration from judges
- strengthening capacity to investigate and prosecute offenders.

Furthermore, poverty persists in Nigeria because of the historical and continuing mismanagement of resources and corruption, particularly but not exclusively in the public sector. The econ-

omy is highly distorted (oil receipt account for 40 percent of GDP, 70 percent of budget revenues and over 95 percent of exports), and inefficient. It has been badly undermined by military rule: Poor governance has served to enrich the minority at the expense of an increasingly impoverished majority.²⁹

“Corruption is a denial of justice. Where it is prevalent, the integrity and impartiality and the whole legal system is brought into disrepute.”

Powerlessness results in material deprivation characterized by poor housing, food insecurity, and poor access to services and utilizes and lack of dignity, security and hope. The causes of vulnerability vary regionally and with circumstance. They relate mainly to economic opportunity, for example, in rural area to reduced access to credit and markets and the declining productivity of natural resources. Local institutions, formed on the initiative of local people, are more important to poor people than governmental or non-governmental organizations. State and local governments are beginning to face up to the responsibilities for delivering services to poor people, and to overcome the mistrust of the people. Much greater effort is needed to benefit the poorest groups by strengthening the capacity of local government and civil society groups.³⁰

Moreover, there is the challenge of legal pluralism which impacts on the quality of administration of law and justice in Nigeria. This challenge is analysed below. Nigeria is one indivisible and indissoluble Sovereign State consisting of thirty six states and Federal Capital Territory, Abuja. This legal entity is known by the name of the Federal Republic of Nigeria.³¹

The 1994 population census put Nigeria’s population at 89 million, though it is commonly

held to be over 100 million today. These millions of people are made up of some 250 ethnic/linguistic groups, making Nigeria one of the world's most populous and ethnically diverse societies.³²

Nigeria is undoubtedly one of the few countries in the world which experience conflict of law problems of every conceivable dimension that is, international, inter-state, inter-local (or inter-personal) and inter-temporal.³³

First, there is a conflict between territorial systems of law arising from the co-existence of federal and state laws. This was brought about by the system of government introduced in 1954, with the creation of three Regions together with the then Federal Capital Territory of Lagos. Today, we have 36 states and the new Federal Capital Territory, Abuja. There are also separate State High courts, State Sharia Courts of Appeal, and State Customary Courts of Appeal constitutionally established. Appeals from these courts go to the Court of Appeal and from there to the Supreme Court both of which are federal institutions.³⁴

On the other hand, there is also a conflict between the Received English Law/Common Law/Nigerian Statutes (i.e. the general Law) and the Customary/Islamic Laws, between Islamic and Customary Laws and between systems of Customary Law inter-se.³⁵

Under our current constitutional democratic dispensation, the 1999 Nigerian constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void.³⁶ Further, if any law enacted by the State House of Assembly is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.³⁷

The introduction of British laws into Nigeria to co-exist with the indigenous systems of customary and Islamic Laws has produced a tripartite system of law. It is this type of multiple system of law that is often referred to as legal pluralism.³⁸

The ethnically diverse groups that consti-

tute Nigeria each has its own system of customary law.³⁹ Although the rules within one group are broadly similar yet there could be significant difference as to matter of details whilst as between the customary law of one ethnic group and another there could be wide divergence.⁴⁰

A further problem is posed within this context by the existence of Sharia or Islamic Law, which is administered in some jurisdictions as a variant of customary law and in some others as a distinct and separate system, while it is almost completely ignored in others.⁴¹

One of our major problems in Nigeria is that we do not have a single system of administration of justice, but three systems. Admittedly the three systems merge near the very top of the Judicial hierarchy but if we are to develop, according to a writer, a truly Nigerian Common Law, it appears necessary to re-examine the position critically and see what changes that would be necessary for the attainment of the suggested goal.⁴²

The constitution of Nigeria vests judicial powers of the Federation and of the States in the earlier mentioned superior courts of record.⁴³ In addition to these both the federal and the state legislatures are empowered to establish other courts by statute. It is under powers thus conferred that some of the States have established Sharia/Area/Customary/District/Magistrate Courts of various grades, powers and jurisdiction.⁴⁴

Now our system of administration of Justice is premised upon a hierarchy of courts along which a litigant can climb from the lowliest court to the highest court of the land by way of successive appeals.⁴⁵

The effect of all these is that whereas at the state level we have in some states three systems of courts purporting to be administering three different types of laws, appeals from all these courts converge in the court of appeal established by the federal government. That court is expected and indeed does make authoritative pronouncements in respect of the three systems and of all the sources of law.⁴⁶ Hence the constitutional requirement that the judges of the court of appeal must consist of at least three members learned in Islamic and customary laws respectively. It is in-

tended that such Judges will constitute the court of appeal in deciding appeals from the Sharia or customary courts of appeal.⁴⁷ Finally, at the very pinnacle of the courts hierarchy stands – the Supreme Court which has the final responsibility of piloting the course of administration of justice, judicial and legal development in the country.⁴⁸

The resultant tripartite system of law and of court has created uncertainty or lack of uniformity, at times, in the administration as well as in the teaching of the law, especially customary and Islamic family and Penal Laws and Jurisprudence.⁴⁹

First, the frequent recourse to the received English Law in cases where the rules of the indigenous laws are objectionable, or inadequately developed or practically non-existent has often obstructed the need for a restatement or indeed for the necessary modification of the rules of these customary laws.⁵⁰

Second, the ultimate recourse to customary law in cases of “injustice” has also created the need to effect necessary modifications on the exotic rules of the received English Law.⁵¹

Third, the choice of law rules are themselves so unsuitable to modern conditions that they are often misapplied or practically ignored by the courts.⁵²

Attempts made by the courts to sanction a change of customary law within the context of the existing choice of law rule appears unconvincing if not altogether misleading.⁵³

It is however clear that with the increasing fluidity and frequency of movement of individuals and groups, the penetration of Western education and culture into circles formally traditional and the resultant gradual breakdown of ethnic and even family cohesion, a wholly new situation is arising which demands the formation of new rules in the regulation of personal rights.⁵⁴

It has been argued that “the idea of subjecting individual citizens to different laws within a single state is a mark of legal under-development. It is indeed absurd that different courts still exist to administer these different laws.”⁵⁵

The resultant problem here is not limited to conflict of Jurisdictional rules but also include the divergence in the quality of justice obtainable in the various systems of court. This is so because

of the different rules of procedure, and the marked differences in the quality of the judicial personnel of these courts. Infact the point has been made that the greater defect of the arrangement is the possibility that a litigant may, on occasion, be left without a competent court to hear his complaint.⁵⁶

One of the challenges of legal pluralism in Nigeria, according to a legal scholar,⁵⁷ is not the desirability of simply abolishing customary and Islamic Laws and courts but our failure or neglect to explore the possibility of integrating the tripartite system of law and unifying the diverse systems of court which, in our view, is long overdue for the following reasons:

i. Economic consideration: Mounting separate system of customary, Islamic and general court is hardly a healthy way of utilising scarce human and material resources within the context of the prevailing adverse economic situation of a developing economy like ours.⁵⁸

ii. Legal Certainty: The performance of the judges in matters of internal conflict of law has made it almost impossible to tell in advance, in most cases, which particular system of law the court will apply to a given situation.⁵⁹

iii. Legal Simplification: An integrated system of law will not only simplify the teaching of law but also its administration. The courts will be spared the perplexing task (of which the law reports show more than ample evidence) of having to decide in any given case whether the general or customary law applies and to ascertain the particular customary law to be applied.⁶⁰

iv. Matter of Policy: There is the issue of policy as to whether it is right and proper that citizens of a sovereign state in modern times should continue to be governed by different laws in their legal relations.

v. Social Convenience: An integrated system of law which takes account of contemporary social requirements will be more suitable to the needs of the time than either the inchoate and somewhat outdated rules of customary laws, the exotic rules of the received English Law or the excessive reliance on ossified and outdated fiqh literature, legal rules and procedures of a particular School of Islamic Jurisprudence, especially the

Maliki.⁶¹

If we must for now content ourselves with the symbiosis of imported, customary or religious laws (as perhaps there is no other option in sight) we should at least ensure that the diverse systems of law are judiciously applied. It should be stressed however that no single principle could cover satisfactorily the juristic analysis of the process of choosing between two or more applicable systems of law.

It is the search for a Nigerian national identity that has led to a plea for the evolution of a Nigerian Common Law by one of our distinguished Jurists.⁶² As we would remember that great German Jurist, Von Savigny ties law strictly to the question of National identity. However much his Volkgeist theory may be criticised, and perhaps debunked, it appears clear that he has a lesson for countries like ours in dire need of a national identity, and for which we have sought for the past nearly half a century, but in vain.⁶³ It is Savigny's thesis that "Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation loses its nationality."⁶⁴ Put in the reverse, if we must have a national identity we must have a Common law. In other words, that one way, and perhaps the best way in which we can forge a national identity is through the instrumentality of the law.

Two problems emerge at once in the search for Nigerian Common Law: (1) The problem of the existence of different substantive laws, and (2) The problem of the existence of different systems of courts.

As we have seen there are three broad systems of laws operating in this country: (a) the customary laws, (b) the Shariah or Islamic Law, and (c) what we should call the general law.

The problem here is not really the fusing together of the customary law, the Shariah and the general law, but, as aptly put by Elias,⁶⁵ one of synthesizing the three systems of law and in the process producing a Nigerian Common law.

As stated earlier, the second problem is that of having three systems of courts, namely the Customary Courts, the Shariah Courts, and the General Courts.⁶⁶

The focus here is on the problem connected with the human angle of the present system by which you have a Chief Judge, a President of the Customary Court of Appeal and a Grand Kadi all of whom at least in theory head three systems of judicial administration in any particular state which has established the last mentioned two. The irony of it is that in each of the States in which a Customary Court of Appeal has been established, the President has been either a Judge of the High Court of the State or a person qualified to be so appointed. He has no special certificate of competence in the knowledge of the system of law he is expected to administer or practise. Invariably his knowledge of Islamic law is practically nil. The Grand Kadi is invariably an Islamic Scholar of a high Standard, but his knowledge of the general law is not expected to be much. The Chief Judge is invariably a person of competent knowledge of the general law, but with very little knowledge of Islamic Law, if any. Today however, many Chief Judges in Northern States of Nigeria are learned in both the general law and Islamic Law. While many Kadis of States Sharia Courts of Appeal are persons of competent knowledge of both the general and Islamic Laws, only few Grand Kadis have such competent knowledge of the general law.

A distinguished Jurist has on many occasions suggested, "as with the case of the Customary Law, Islamic Law should be taught in all our Universities as part of each of the subjects offered for basic degrees where applicable."⁶⁷ Over three decades ago, Professor Coulson pleaded that the curricular of law faculties in this country should offer a general understanding of Islamic Law. However, he says that:⁶⁸ "it would seem to me to be wrong in principle to introduce Islamic Law into the syllabus as a Separate subject. Rather than forming an isolated part of the curriculum it should be merged and integrated into the substance of two basic existing courses, namely those of Jurisprudence and family Law."⁶⁹

It is quite obvious that the earlier suggestion made takes Coulson's suggestion much further. The stand herein taken is that Islamic Law or Sharia should be taught not only as part of the two subjects mentioned but of all other rel-

evant courses. In effect it should be integrated into the general corpus of our single system of law. This will ensure that the possession of an LL.B. degree from any of our universities will be evidence of a minimum knowledge of the Sharia, of Customary Law and of the General Law.

It is such a certificate, according to Dr. Aguda, “that will be the requisite qualification for admission into the Nigerian law School with the ultimate aim of admission into a unified legal education/legal profession/administration of law and Justice.”⁷⁰

IV. Conclusion

It is evident from the above analysis that in developing countries like Nigeria the need for a fair and equitable legal framework, courts which are accessible and dispense justice speedily, improved customary justice systems and a greater role for alternative dispute resolution, mechanisms as well as penal reform, cannot be overemphasized.

Hence, actions to improve the legal environment for poor people include:

- Law reform which removes discriminatory provisions and incorporates rights conforming with international standards
- Promoting the use of public interest litigation by advocacy groups and others to challenge the legality of discriminatory government measures
- Paralegal schemes offering assistance and advice
- Improved access to legal aid so that poor people can afford legal representation
- Practical, problem-based legal rights education which helps poor people to protect their livelihoods.

Courts are often inaccessible. They are usually located in towns away from the rural poor and use languages and proceedings which are difficult for them to understand. Many are run inefficiently. Criminal cases can take years to proceed from arrest to trial. The sheer volume of cases pending across the system can bring it to a state of near paralysis. Courts can be made more accessible and provide a better service through:

- the use of local languages
- allowing people to give evidence in narrative form

- appointing people from the community to sit as lay magistrates
- establishing mobile courts to service rural communities
- providing information about the courts to the public
- improving case-flow management by computerization of court records and strengthening court administration
- awareness-raising for judges in new developments affecting juvenile justice, alternatives to prison etc.
- better co-ordination between courts and other agencies.

Customary justice systems will work more effectively if measures are taken to encourage:

- customary systems to operate more fairly, e.g. by providing paralegal representation
- awareness-raising in human rights for traditional leaders
- customary systems to work more effectively with the formal systems, e.g. in some cases the formal courts could hear appeals from the customary courts
- measures to make traditional forums more representative of the community as a whole and to encourage participation of women in proceedings.

In some circumstances, it is necessary to go to court, but for most people, most of the time, litigation should be a last resort. There is also a range of alternatives to litigation which can be used to resolve disputes, for example in family or commercial matters. These include:

- arbitration, where the arbitrator’s decision is binding, but the process is quicker and cheaper than going to court
- mediation, in which a mediator facilitates an acceptable agreement between the parties. This can also provide the basis for a more constructive relationship in the future
- tribunals, which decide cases brought before them on a less formal basis than the courts, free from strict rules of evidence and procedure.

Imprisonment is generally accepted to be ineffective in reducing repeat offending. In most developing countries 80 percent of the prison population consists of those awaiting trial, sometimes for many years.

Sentences which put reparation before retribution, and alternatives to prosecution and prison, are more humane and cost-effective. There is an urgent need to decongest prisons and improve conditions in line with minimum international standards. Imprisonments can be made by:

- reviews of sentencing policy so that people are not sent to prison for minor offences
- the use of community service, suspended sentences, cautions etc. for less serious offences and decriminalization of the most minor offences
- the use of approved schools for juvenile offenders and the segregation of children from adults in prison
- the use of bail for those awaiting trial
- improvements in prison conditions eg through prison farms, open prison and better disease control, including the spread of TB and HIV/AIDS.

Looking into the future, justice sector reform in Africa must be seen as a pro-poor, long term, developmental endeavor that contributes to the realization of human rights. However, significantly more effort needs to be put into providing aid in a manner that takes into account good development practice, and in elaborating the tricky concept of national ownership, grounded in a proper understanding of African realities. If these approaches are carried out more fully, donors will truly be living up to the new agenda.

Notes

1. United Kingdom Dept for International Development (DFID, "Nigeria Country Strategy Paper 2000-2002, (September 2000), pp.1-2

2. Ibid.

3. See Federal Government of Nigeria: - Summary of Nigeria MDGs Report Card 2005, Information Kit, (2006) at p. 5.

4. Ibid.

5. Ibid at p.5.

6. See DFID, London, UK (2000): - Justice and Poverty Reduction: - Safety, Security and Access to Justice for All.

7. See Federal Ministry of Justice of Nigeria, Abuja, (2004): - Agenda for Reforming the Justice Sector in Nigeria, pp.3-18.

8. See Ladan M.T., "Human Rights as the benchmark for development policy", in Journal of Economic, Social and Cultural Rights (2002), Vol. 1 No. 6, October-December 2002, Shelter Rights Initiative, Lagos, pp. 1-26.

9. See Ladan .M.T., (ed.) Law, Human Rights and the Administration of Justice in Nigeria: - Essays in honour of Justice M.L. Uwais (2001): - Department of Public Law, Faculty of Law, A.B.U., Zaria, Nigeria, pp. 66-90.

10. See UN Office on Drugs and Crime, Vienna, Austria (2005): - Why Fighting Crime Assist Development in Africa: - Rule of Law and Protection of the most vulnerable: - Summary Report, pp. 1-88.

11. See National Centre for Women Development Abuja/UNICEF/World Bank - IDF Report (2005): - A compilation, review and gender analysis of the Constitution, National and State Statutes, Regulations, Local Government Bye-Laws, Customary and Religious Laws, Policies, Practices and Court decisions relating to the statuses of Women and Children, applicable in Nigeria, at pp.1-15.

12. See Ladan M.T., "Women Rights, Access to and Administration of Justice under the Sharia in Nigeria", in Ezeilo, Ladan and Akiyode (eds.) Sharia Implementation in Nigeria: - Issues and Challenges on Women's Rights and Access to justice (2003), Women's Aid Collective, Enugu, Nigeria, at p.19-43.

13. See Otteh J., Fading Lights of Justice: - An Empirical study on Criminal Justice Administration in Southern Nigeria Customary Courts (1995), Civil Liberties Organization, Lagos, and Danish Centre for Human Rights, Copenhagen.

14. See Ladan M.T., Supra note 12, at p.19.

15. See Ladan M.T., "Towards an effective African System for Access to Justice on Environmental

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matters", in: - Ahmadu Bello University Law Journal, Vols. 23-24, (2005-06), Faculty of Law, A.B.U., Zaria, Nigeria, at p.10.

16. Ibid, at p.11

17. See DFID Supra note 6 at p.20.

18. See Piron, L.H., "Donor Assistance to Justice Sector Reform in Africa: - Living up to the New Agenda?" in, Justice Initiatives (2005): - Open Society Justice Initiative, Open Society Institute, New York, USA, February 2005, at pp.4-11.

19. Ibid.

20. See UK DFID and USAID (2001): - Summary Report on Findings of the Joint Donor Assessment Mission on the Nigerian Justice Sector, June 2000, presented at a joint donor workshop in Abuja, 22-24 January 2001.

21. Ibid.

22. See DFID Nigeria (2001): - Background paper on Access to Safety, Security and Justice. Presented at a joint donor workshop, Abuja, 22-24 January, 2001.

23. The UK DFID Nigeria Access to Justice Safety and Security Programme approved in 2001 with 30 million British Pounds sterling for a period of five years, paying attention to research and the perspective of the poor.

24. Ibid.

25. See Supra note 20.

26. See Supra note 7.

27. Federal Ministry of Justice, Supra note 7.

28. See UN Office for Drugs and Crime, Vienna, Austria (2006): - Assessment of the Integrity and Capacity of the Justice system in three Nigeria States: - Technical Assessment Report, pp. 1-63.

29. ee DFID Nigeria Country Strategy Paper (2000) t p.2.

30. Ibid.

31. Sections 2 and 3 of the 1999 Nigerian Constitution.

32. International Commission of Jurists (ICJ):- Nigeria and the Rule of Law - A Study, 1996, Geneva, Switzerland, p.30.

33. See I.O Agbede, "Towards Unification of Law in Africa", in *Verfassung und Recht Ubarsee* (3/4 Heft) 1975, pp. 423 - 433.

34. See Sections 232 - 5; 260 - 4; and 265 - 9 of the Nigerian Constitution.

35. See P.N. Agu, "The Dualism of English and Customary Laws", in *African Indigenous Laws*, 1975 Chapter 12, p.251. This is a whole subject of independent study and outside the scope of this paper to discuss.

36. Section 1(1) and (3) Supra note 1.

37. Ibid, Section 4(5).

38. See Agbede I.O, *Legal Pluralism*, Shaneson Publishers 1991.

39. See Ladan, M.T., "Effects of the Test of Enforceability of Customary Law on the Application of Islamic Law in Nigeria" in, *ABU Journal of Islamic Law*, Faculty of Law A.B.U., Zaria, Nigeria, Vol. 1, 1999, pp.41 - 74.

40. See Obilade, A.O., *The Nigerian Legal System*, Sweet and Maxwell, (1979) p.83.

41. Islamic law is applicable in some Northern States as a distinct system whereas in the Western States it is applied as a variant of customary law whilst it is almost totally ignored in the Eastern States of Nigeria.

42. See Elias, T.O., (a distinguished jurist) *Law and Social Change in Nigeria*, University of Lagos and Evans Brothers Ltd., (1972).

43. Supra note 4.

44. See e.g., *Sharia Courts (Administration of Justice and Certain Consequential Changes) Law No.5 of 1999 of Zamfara State*. See Section 4(7) of the Nigerian Constitution, 1999.

45. Supra note. 4.

46. The main sources of Nigerian Law may be classified as follows:- (a) The Received English Law (the English Common Law and Certain English Statutes made Applicable to this Country as part

of the General Law); (b) Nigerian Statutes (enacted by both the Federal and State legislatures Since independence); (c) Rules of Customary Law deemed to be applicable in causes and matters between Nigerians, and between Nigerians and non-Nigerians, provided they are not repugnant to natural justice, equity and good conscience, nor incompatible with any law for the time being in force; (d) The rules of Sharia or Islamic Law has been introduced into the northern part of this country between the 14th and 15th century A.D. and in the nearly five hundred years Islamic observances and practices had more or less supplanted those of the customs of the people in the affected states. (see Spencer Trimingham, *A History of Islam in West Africa*, Oxford University Press, London, 1962). In all courts other than those applying Islamic law directly, it must be proved by oral and possibly documentary evidence (see *Onibudo and others V. Akilu and Ors* (1982) 7 SC 60 at 94); and (e) decisions of superior courts of record of Nigeria, particularly of the Court of Appeal and the Supreme Court of Nigeria.

47. See Section 240 and 244 – 5 Nigerian Constitution, 1999.

48. See Ladan, M.T., (ed.) *Law, Human Rights and the Administration of Justice in Nigeria, 2001*, A.B.U. Press, Zaria, Nigeria, pp.1 – 404.

49. For example, the National Universities Commission of Nigeria prescribed minimum course content for a law degree (LL.B) in Nigerian Universities also includes two optional subjects:- Islamic Law and Customary Law. It is suggested that more time should be given/devoted to the study of Islamic Law and at least the customary laws prevailing in the state of location of every faculty of law and these courses should not be optional, but mandatory or core. See NUC Booklet on Minimum Standard for Law in Nigerian Universities, 1989.

50. See Ladan M.T., supra note 9.

51. Ibid, note 9.

52. See the following decided cases:- *Yinusa v. Adesubokan* (1968) NMLR97; *Olowu v. Olowu* (1985) 3 NWLR 378; See Agbede, “Legal Pluralism and the problems of Ascertaining Personal Laws:- A consideration of *Yinusa v. Adesubokan* 91971) N.B.J. pp. 69 – 73; Agbede, “Personal Law and Personal system of Law:- Synthesis or symbiosis” in *Law and Development*, (ed.) Omotola and Adeogun (1987) Chapter 7.

53. Supra note 22.

54. Ibid.

55. Agbede, supra note 22. The Korah commission made this observation over a quarter of century ago. See *Native Courts commission of Inquiry (gold Coast) Ghana 1951* at p.3.

56. The Brooke Commission’s Report cited a case where the Native Court, the Magistrate Court and the Supreme Court all declined Jurisdiction. The unfortunate plaintiff was a Syrian who was claiming title to land subject to customary law. See Brooke Commission’s Report at p.82. Established by the Governor of Nigeria under the Commission of Enquiry Ordinance Cap.37 Laws of Nigeria, 1948.

57. Agbede, supra not 22.

58. The arrangement demands setting up separate courts in the same locality without regards to the actual judicial work-load within the locality.

59. See *Okoh v. Olotu* 20 NLR 123; and *Vangan v. George* 16 NLR 85.

60. The choice of law rules in this respect are not particularly helpful.

61. See Ladan, M.T., supra note 9.

62. T.A. Aguda (late), *The Nigerian Legal System and the Problem of National Identity*. University of Ife, 1985, Dec. 13, p. 15.

63. Over fifty years ago, Chief Obafemi Awolowo in his book, *Path to Nigerian Freedom* (London, 1947) pp. 47 – 48 described Nigeria as “a mere geographical expression”, whilst the first Prime Minister of Nigeria, Sir Abubakar Tafawa Balewa said that Nigeria “existed as one country only on paper and that its unity is only a British intention for the country”. See the *Handsard* of March 20 – April 2, 1947.

64. *Of the Vocation of Our Age for Legislation and Jurisprudence (1831)* (translation by Haywood) p. 27.

65. See T.O. Elias, *Law and Social Change*, supra note 12, at pp. 254 – 271, especially at 271.

66. See T.A., Aguda, *the Challenge for Nigerian*

Law and the Nigerian Lawyer in the Twenty-First Century (Federal Government Printers, 1988) at p.9.

67. Ibid.

68. N.J. Coulson, "Legal Education and Islamic Law" in *Journal of the Centre of Islamic Legal Studies, A.B.U., Zaria.*, Vol. 1, No. 1, at p.5.

69. At the time he wrote his article, Coulson was Professor and Dean of Law of Ahmadu Bello University, Zaria.

70. *Supra* note 36. See also Ladan M.T., *supra* note 18.

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THE PURSUIT OF TRANSITIONAL JUSTICE AND AFRICAN TRADITIONAL VALUES: A CLASH OF CIVILIZATIONS—THE CASE OF UGANDA

CECILY ROSE AND FRANCIS M. SSEKANDI



After almost twenty years of violence in northern Uganda, movement toward reconciliation has begun even though the government of Uganda has not yet reached a peace deal with the Lord's Resistance Army (LRA). Although making peace with the LRA has been elusive, literature on the subject has already begun to discuss how Uganda might foster long-term reconciliation, especially in the context of the International Criminal Court's pending indictments of five LRA leaders. As thousands of former members of the LRA have returned to their communities after taking advantage of the amnesty granted by the government of Uganda under the Amnesty Act of 2000, issues of reintegration and reconciliation have received more attention from government officials, non governmental organizations (NGOs) and academics. Furthermore, when the International Criminal Court (ICC) commenced its investigation of the senior leaders of the LRA in 2004, the international community began to examine how the ICC's role might conflict with peace negotiations and the use of traditional reconciliation mechanisms in northern Uganda. While negotiators struggle to make peace, and victims of the LRA struggle

to forgive and to reintegrate former LRA rebels who have returned from the bush, it is critical to consider the extent to which the pursuit of justice through prosecutions could advance or hinder true reconciliation. This paper therefore examines how the Amnesty Act and the traditional mechanisms foster the process of reintegration and reconciliation in northern Uganda and how they mesh with the ICC's pursuit of justice and deterrence.

Theoretically, reconciliation in a post-conflict context in northern Uganda would involve admittance of guilt by perpetrators and forgiveness by victims through some sort of dialogue. Communities would reintegrate former members of the LRA and victims would receive support to enable them to return to their homes and resume their lives. Communities would receive economic and social assistance so that the region as a whole could overcome a conflict that has left it impoverished and marginalized. Though methods of reconciliation necessarily differ according to the particular context, some tools foster it more successfully than others.

This paper argues that justice and reconciliation in northern Uganda would require more than amnesty and the use of traditional mechanisms, which respectively work more towards ending the conflict and fostering reintegration of former combatants than towards justice and reconciliation. To address the interests of victims of the conflict, compensation for victims and communities as well as a truth telling process would be necessary. In addition, prosecution of the most notorious leaders of the LRA by the ICC would have been helpful as a tool for promoting justice if the prosecutions had occurred before the current peace talks. Part I of this paper provides back-

ground information on the conflict in northern Uganda, while part II outlines Uganda's Amnesty Act and describes the traditional conflict resolution and reconciliation mechanisms of the Acholi people. Part III discusses the various mechanisms used in South Africa, Rwanda, and Sierra Leone to promote justice and reconciliation and argues that a truth-telling process and a compensation system could help to promote reconciliation in northern Uganda, while ICC prosecutions of LRA leaders may now be of increasingly limited utility to Uganda.

I. Background on the Conflict in Northern Uganda

The war in northern Uganda has persisted for nineteen years, since President Yoweri Museveni and the National Resistance Movement (NRM) took power in 1986. The Lord's Resistance Army emerged from Alice Auma Lakwena's Holy Spirit Movement (HSM) that aimed to overthrow the newly established NRM government and enjoyed popular support from 1986 to 1987. When Lakwena fled to Kenya in 1987, after her forces suffered heavy casualties in a battle with the NRM, her supposed cousin, Joseph Kony assumed leadership of the remnants of the HSM.

Under Kony's command, the LRA purportedly aimed to overthrow Uganda's government based in the southern capital of Kampala and to rule Uganda according to the Ten Commandments. However, the LRA did not in fact have a "coherent ideology, rational political agenda, or popular support." The LRA never crossed the Nile River which divides the northern and southern regions and instead attacked northern Uganda's civilian population whom Kony claimed to be punishing for their sins, particularly that of not supporting him. Because the LRA lacked a popular base of support, it populated its forces almost exclusively through abduction and forced conscription of children, usually ages 11-15.

The Government of Sudan had heavily supported the LRA until 2002 when Uganda and Sudan signed a treaty by which both countries agreed to stop supporting each other's insurgents. With the permission of the Sudanese

government, the Ugandan People's Defence Force (UPDF) launched a military offensive in March 2002 against the LRA, known as "Operation Iron Fist." Though the UPDF was supposedly aiming to eradicate the LRA by attacking its camps in southern Sudan, the LRA instead fled back into northern Uganda where fighting and abductions intensified. The LRA also expanded the theatre of war into the eastern region of Uganda which had previously been less affected by the conflict. As of the start of Operation Iron Fist, the number of internally displaced persons (IDPs) has grown from 450,000 to over 1.6 million. Furthermore, since the mid-1990s, approximately three-fourths of the populations in the Gulu, Pader, and Kitgum districts of northern Uganda have been displaced.

The LRA's atrocities include killings, beatings, mutilations, abductions, forced recruitment of children and adults, and sexual violence against girls who serve as "wives" or sex slaves for LRA commanders.¹⁰ The LRA's members range between 1,000 and 3,000 in number, with a core of 150 to 200 commanders and the rest consisting of abducted children (the LRA has abducted approximately 20,000 children during the nineteen year conflict). During the course of the conflict the LRA has looted and burned houses, storage granaries, shops, and villages in northern Uganda. In addition, the Ugandan People's Defence Force has also committed human rights violations against the civilians in northern Uganda, including extrajudicial execution, arbitrary detention, torture, rape and sexual assault, recruitment of children, and forcible relocation. Altogether, this prolonged conflict has had a severe socio-economic and psychological impact on the entire Acholi population.

In December 2003 President Museveni referred the problem of the LRA to the International Criminal Court. The government of Uganda reportedly conceived of the referral as a strategy for generally engaging the international community and specifically increasing international pressure on Sudan to stop it from supporting the LRA. In October 2005, the ICC issued indictments and arrest warrants for Kony and four other leaders, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Rasaka Lukwiya. Their al-

leged crimes include rape, murder, enslavement, sexual enslavement, and forced enlistment of children. As of this writing, none of the indictees are in the custody of the Ugandan government or the ICC and Lukwiya was reportedly killed.

In the spring of 2006, a significant shift in the conflict occurred as the LRA began portraying itself as a politically motivated movement with legitimate grievances about the marginalization of northern and eastern Uganda. In this vein, Kony appeared in May for the first time on a video in which he discussed peace and denied the LRA's involvement in the commission of war crimes. Most importantly, in May and June, a series of meetings took place between Kony and Riek Machar, the vice president of southern Sudan and the second in command of the Sudan People's Liberation Movement (SPLM). The SPLM reportedly took on the role of peace mediator because its leaders recognized that the LRA threatened the potential for stability and development in southern Sudan.

In mid July the government of Uganda began actively negotiating for peace with the LRA. Despite the ICC indictments, Museveni has offered amnesty to Kony should he surrender. After much negotiation throughout the spring and summer, a cease-fire came into effect on August 26, 2006 and peace talks in southern Sudan have been ongoing since that time. The LRA and the government of Uganda are currently negotiating issues of disarmament, reconciliation, and political change in northern Uganda. Meanwhile, Museveni has promised that once the LRA and the government sign a peace deal, the government of Uganda will work to have the ICC drop its charges. The government has also announced that it will establish a \$340 million fund to help northern Uganda.

II. Mechanisms in Uganda

A. Amnesty

Even before the conflict in northern Uganda had no clear end in sight, literature on the subject had already begun to address issues of reintegration and reconciliation. This discussion merits attention because although the LRA and the government of Uganda have not yet successfully negotiated a

peace deal, thousands of former members of the LRA have sought amnesty and returned to their communities. Even when the conflict was ongoing, communities in northern Uganda had begun reintegrating former LRA rebels and had begun to work towards reconciliation through traditional conflict resolution mechanisms. The following section of this paper therefore explore the features of Uganda's Amnesty Act and the Acholis' traditional ceremonies and examines how these two mechanisms alone may fall short of achieving reintegration and reconciliation both during and post-conflict.

1. The Contours of the Amnesty Act

Religious and cultural leaders in northern Uganda have led the movement towards ending the conflict through amnesty. Accordingly, the objective of the Amnesty Act of 2000 is to break the cycle of violence in northern Uganda by encouraging the combatants of various rebel groups to leave their insurgencies without fear of prosecution. The Act declares amnesty with respect to any Ugandan who has engaged in war or armed rebellion against the government of Uganda since January 20, 1986. Those granted amnesty under the act receive "a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State." The following outlines the Act's provisions for granting amnesty as well as the institutions which it establishes for that purpose.

To qualify for amnesty, the applicant must have actually participated in combat, collaborated with the perpetrators of the war or armed rebellion, committed a crime in the furtherance of the war or armed rebellion, or assisted or aided the conduct or prosecution of the war or armed rebellion. The government will not prosecute or punish such persons if he or she reports to the nearest local or central government authority, renounces and abandons involvement in the war or armed rebellion, and surrenders any weapons in his or her possession. In renouncing involvement, the rebels' declarations need not be onerous or specify the crimes for which he or she seeks amnesty. After a rebel has completed the above steps, he or she becomes a "reporter," whose file the Amnesty Commission reviews before a Certificate of

Amnesty is issued and the process is complete.

In addition, the Amnesty Act establishes the Amnesty Commission which consists of a Chairperson, who is a judge of the High Court (or a person qualified to be a judge of the High Court), and six other persons of high moral integrity. The Commission's objectives are "to persuade reporters to take advantage of the amnesty and to encourage communities to reconcile with those who have committed the offenses." The Commission's functions specifically require it to monitor programs of demobilization, reintegration, and resettlement of reporters and to coordinate a program to sensitize the general public regarding the Amnesty Act. According to the International Center for Transitional Justice, the Commission appears to be efficient and well functioning despite challenging circumstances such as inadequate funding. It also seems to maintain good relationships with northern Uganda's civil society. Finally, the Act further institutes a seven member Demobilization and Resettlement Team (DRT) which functions at a regional level to implement the amnesty by establishing programs for decommissioning arms, demobilization, resettlement, and reintegration of reporters.

In 2005 the Commission began to run a disarmament, demobilization, and reintegration (DDR) program to support former combatants as they start new lives. The program provides the reporters with resettlement packages which include 263,000 Uganda shillings (US \$150) and a home kit with items such as a mattress, a blanket, saucers, plates, cups, a hoe, maize flour, and seeds. Funding of the resettlement packages has only been selective, leaving approximately 10,000 former rebels still without packages (out of a total of 15,000 reporters). However, the Multi-Country Demobilization and Reintegration Program (MDRP) of the World Bank released US \$450,000 at the beginning of 2005 and the Commission anticipates that the MDRP will release more funds, as is needed, out of the \$4.1 million budgeted for the purpose. Lastly, while the DRT supposedly monitors reporters for up to two years, there are in fact few long-term programs and reintegration is generally uncoordinated and poorly funded.

2. Shortcomings of the Amnesty Act

The Amnesty Act could fail to function as a mechanism for reconciliation because the resettlement packages have been so contentious, and because Commission has not expanded its functions to include a truth-telling process. First, while the DRT's reintegration measures are generally a main weakness of the current amnesty process, the resettlement packages have been particularly contentious in northern Uganda and may foster resentment and hinder reconciliation unless the government handles them with greater sensitivity. Many former rebels view the government's untimely distribution of resettlement packages as a failure to honor their commitments to the reporters. According to the Refugee Law Project, the issue of resettlement packages has "become the primary focus... of the Amnesty Law for the majority of ex-combatants interviewed, and is the major issue when considering the current potential for reintegration into the region." In addition, resentment exists among some displaced, impoverished non-combatants who perceive the packages as perversely rewarding the former rebels for having committed atrocities. Communities sometimes fail to understand why the government offers assistance to the former rebels but not to the other community members whom they victimized.

Furthermore, the issue of resettlement packages has created divisions not only between former rebels and their communities, but also between the former rebels themselves. The treatment of former high-level rebels and average returnees is widely disparate. Usually former LRA rebels return to their homes or internally displaced persons camps with a delayed or non-existent resettlement package and little further monitoring or follow-up by the government. Former high-level rebels, however, receive 24-hour armed protection by the UPDF and live in UPDF barracks or in a renovated hotel in Guru.

Second, the Amnesty Act could fail to reach its potential as a tool for reconciliation because the Commission has not fulfilled its broader functions, which could include a truth-telling process. Under Article 9 of the Amnesty Act, the Commission "shall" also consider and promote

appropriate reconciliation mechanisms in northern Uganda, promote dialogue and reconciliation within the spirit of the Amnesty Act, and “perform any other function that is associated or connected with the execution of the functions stipulated in the Act.” The Commission has in fact supported the integration of traditional cleansing ceremonies, thereby working to fulfill its mandate to promote appropriate reconciliation mechanisms. Yet, these provisions also suggest that the Commission could adopt a truth-seeking function or establish links with traditional conflict resolution mechanisms. A truth-telling process, perhaps in the shape of a truth and reconciliation commission, would foster a national dialogue and at least theoretically promote reconciliation within northern Uganda and between northern Uganda and the rest of the country. Instituting such a process would in fact be in keeping with the language of the provision as well as the act’s goal of fostering reintegration. The merits of such a truth-telling process are explored in more detail below.

B. Traditional Reconciliation Mechanisms

Traditional Acholi leaders have also strongly advocated the use of traditional conflict resolution and reconciliation ceremonies as mechanisms for reintegration in the post-conflict context. Although traditional chiefs have not had any legal status for most of the last century, their legitimacy was never destroyed and many continued to operate informally. As of 1911, colonially appointed chiefs, known as Rwodi Kalam, replaced the traditional chiefs, known as Rwodi, and the 1965 Constitution abolished the system of traditional chiefs (Kings) altogether. The 1995 Constitution, however, led to the revival of traditional institutions and allowed traditional leaders to exist in any part of Uganda. Furthermore, a civil society initiative in 2000 reinstated many traditional leaders, including the Acholi Traditional Leaders Council and the head chief, known as the Lawi Rwodi, whom the other Rwodi elect. In general, the chiefs’ political independence gives them enhanced credibility in mediation and reconciliation.

According to Acholi customs, when an offender declares that he or she has committed a

wrong, the traditional conflict management system is triggered. The dispute resolution process identifies certain behaviors as “kir,” or taboo. “These behaviors may range from the criminal to the antisocial--violent acts, disputes over resources, and sexual misconduct--including behavior that would prevent the settlement of the dispute.” Clans must then cleanse the “kir” through rituals which help to reaffirm communal values. Many argue that these traditional mechanisms in particular represent important channels for reintegration and reconciliation which can and should be widely adopted. The following section details “the “stepping on the egg ceremony,” mato oput, and “the “bending of the spears” ceremony.

1. Three Ceremonies

First, cleansing ceremonies take place upon the return of an individual who has spent a significant amount of time away from the community. The first ritual cleanses foreign elements to prevent them from entering the community and bringing it misfortune. The returnee steps on a raw egg which symbolizes innocence, or something pure or untouched. Its crushed shell represents how foreign elements crush the community’s life. In addition, a twig from the opobo tree and the layibi also accompany the ceremony. The twig symbolizes cleansing because soap is traditionally made from the opobo tree and the layibi is the stick for opening the granary and thereby marks the individual’s return to eat where he or she has eaten before. These individual cleansing ceremonies routinely take place whenever former LRA members return to their communities. Most agencies which receive and reintegrate former combatants ensure that the somewhat bureaucratic process also incorporates traditional ceremonies, usually performed at the agencies.

Second, the mato oput (meaning drinking of the bitter root) restores relationships within or between friendly clans after a wrongful killing or murder between them. Relatives of the offender or victim report the killing or murder and then the clans discuss the circumstances. The offender asks for forgiveness and then the parties decide upon compensation by the entire clan of the offender, usually in the form of cattle or money. Compensa-

tion must be affordable so as not to prevent restoration of relations. During this process, the parties consider their social relationship suspended, and they do not take any meals or drinks together. After the offender's clan has made compensation, the local chief presides over a ceremony at which the offender and representatives of the victim kneel together and drink the crushed roots of the oput tree. The root's bitterness symbolizes the nature of the crime and the loss of life. A meal follows this ceremony and the "elders remind everyone present not to promote antagonism."

Third, "the "bending of the spears" (gomo tong) ceremony marks the end of violent conflict between clans or tribes. The parties make vows that the killings will not be renewed. Each clan then bends a spear and gives it to the other, thereby signaling that renewed violence will "turn back on them." The performance of the bending of the spears ceremonies is reportedly very rare.

2. Application of Traditional Mechanisms May be Problematic

Although traditional chiefs have advocated the use of traditional mechanisms, and the Amnesty Commission has supported their use, such mechanisms may fall short of significantly promoting justice. The application and relevance of such ceremonies to the atrocities committed by the LRA is questionable for a variety of reasons. First, while the mato oput ceremony is fairly well known in Uganda, the Acholi no longer widely practice it. Because the ceremony has been in disuse, younger generations question its relevance and value. Also, those who are unfamiliar with the rituals do not gain exposure to them because they are typically held at reception centers in district centers where only small audiences bear witness. Furthermore, non Acholis in northern Uganda and southern Sudan and in fact all Ugandans have also been greatly affected by the LRA conflict since 2002, but have relatively little knowledge of traditional justice ceremonies and might not consider them sufficient. The conflict in northern Uganda has claimed the lives of many soldiers from all over Uganda who were deployed to fight the Kony insurgency. In addition to the lost lives, mil-

lions of dollars of Ugandan tax payers money has been used to attempt to quell the rebellion.

Second, such ceremonies may not have a significant impact because communities may not be genuinely willing to accept former LRA rebels. Academics, NGOs, human rights activists, and reporters have begun to challenge the widely accepted notion that the Acholi people have a special capacity to forgive. A recent survey by the International Center for Transitional Justice shows that community leaders and victims are divided on the topics of justice, accountability, and reconciliation. Victims interviewed by Human Rights Watch apparently "did not agree with the prospect of having the LRA leaders forgiven, however, but instead wanted justice, even retribution." According to the New York Times Magazine, many former child soldiers have reportedly "returned from the bush to find themselves homeless. They cannot go back to villages where people recall the night they returned with the rebels and massacred their relatives and neighbors--and sometimes, even, their own parents." Also, while Acholis "know that all but a few of the oldest commanders were themselves once abducted children, their pity for the rebels as victims is overlaid with hatred and fear of them as victimizers." Human Rights Watch asserts that even if the community has accepted perpetrators back into the community, individual victims might not want to forgive the perpetrators of serious crimes.

Third, mato oput, in its traditional form, does not necessarily apply to the mass atrocities committed by the LRA. Mato oput traditionally applied only to minor cases of manslaughter not to wanton killing, rape or mutilation or a killing between enemies during a war. According to anthropologist Tim Allen, even those promoting the use of mato oput acknowledge that it was a mechanism used for individual cases, not for collective dispute settlement. Mato oput ceremonies therefore may not be sufficient given the scale of the LRA atrocities. Also, the application of mato oput may be problematic because it applies only when the identity of the perpetrator and victim are known. Clans, however, may not be willing to accept responsibility for the acts of former LRA rebels. Finally, in a post-conflict context,

traditional leaders may be so preoccupied with settling the disputes likely to arise when people return to their villages, that they will not be able to oversee the reconciliation ceremonies.

Altogether, these three problems suggest that that traditional chiefs might have to educate the Acholi population about these ceremonies and adapt them to the circumstances presented by the current conflict. These challenges are not necessarily insurmountable, but they do indicate that other non-traditional mechanisms may have to play a prominent role in guiding the reconciliation process among the Acholi. In particular, the Government will have to re-examine its decision to offer amnesty to the most notorious leaders of the LRA because justice would require the prosecution of these leaders under the laws of Uganda. Additionally, Ugandan prosecution of these LRA leaders may in fact be the only politically feasible way for the government of Uganda to persuade the ICC to drop the indictments.

III. Reconciliation Mechanisms Used by Other Post-Conflict African Countries

This section looks to the experiences of other post-conflict African societies and explores other justice and reconciliation mechanisms that the government of Uganda could pursue to end the conflict in northern Uganda and promote peace in the region. This paper proceeds under the assumption that other mechanisms are necessary in Uganda because the amnesty and the traditional conflict resolution and reconciliation mechanisms are insufficient by themselves. With only the amnesty and the traditional mechanisms in place, unrealistic demands of forgiveness may be placed on victims who may never receive compensation or an acknowledgment of guilt from perpetrators. While the Amnesty Act currently does not offer reparations for victims or foster a dialogue or truth-telling process, the traditional mechanisms also have not, as of yet, begun to foster those processes in a robust way.

The following discusses truth-telling in South Africa and reparations in South Africa and Rwanda, and explains how and truth-telling

and compensation could play important roles in promoting reconciliation in northern Uganda.

A. Truth-Telling Processes

Truth and reconciliation commissions can play an important role in post-conflict societies for the many reasons, as South Africa's experience demonstrates. First, truth and reconciliation commissions create comprehensive records of human rights abuses by recording the crimes and the victims' identities and fates. Such a record facilitates public awareness and acknowledgement of past human rights violations and the development of a culture of human rights and more generally, the rule of law. Second, truth and reconciliation commissions provide victims with a "credible and legitimate forum through which to reclaim their human worth and dignity," and they provide perpetrators with a "channel through which to expiate their guilt." Finally, a post conflict society that fails to establish a truth-telling process may perpetuate anger and revenge, disregard the needs of victims, and preclude eventual forgiveness. In South Africa, after much debate, the government chose to establish a truth and reconciliation commission in order to record the past and work towards uniting a very divided population. The following discusses South Africa's experience with truth-telling and explores its application to northern Uganda.

1. South Africa's Truth and Reconciliation Commission

South Africa established its Truth and Reconciliation Commission on July 19, 1995 when President Nelson Mandela signed into law the Promotion of National Unity and Reconciliation Act. The Commission's mandate required it to hold hearings over the course of two years about human rights abuses spanning from March 1, 1960 through May 10, 1994. The Act established the Truth and Reconciliation Commission (TRC) for the purpose of fully investigating and documenting the gross human rights violations of South Africa's past. The TRC existed in order to restore victims' human rights and civil dignity by allowing them to recount the violations they suffered, to recommend reparations, and to determine whether to grant amnesty to those who

perpetrated abuses for political objectives and who provided the Commission with a full account of their actions. Archbishop Desmond Tutu chaired the TRC, which consisted of three separate committees: the Committee on Human Rights Violations (HRV), the Committee on Amnesty, and the Committee on Reparation and Rehabilitation.

“By recounting the abuses they had suffered, victims found some relief from the self-blame and guilt which they experienced because their political activity had caused suffering for themselves and their families.”

The hearings of the HRV Committee are of particular importance for our purposes. The Act specifically tasked the HRV Committee with hearing victims’ stories and determining whether gross human rights violations had occurred. The enabling legislation defined gross violations as the “violation of human rights through the killing, abduction, torture, or severe ill treatment of any person... which emanated from conflicts of the past... and the commission of which was advised, planned, directed, commanded or ordered by any person acting with a political motive.” The HRV Committee ultimately processed approximately 22,000 victim statements and thousands told their stories.

The storytelling process was tremendously valuable, but it was not without serious pitfalls. By recounting the abuses they had suffered, victims found some relief from the self-blame and guilt which they experienced because their political activity had caused suffering for themselves and their families. The HRV Committee acknowledged the sacrifices made by these individuals, and thereby created new, redeeming narratives. Collectively,

the HRV Committee hearings created a new social memory for South Africa by legitimizing previously suppressed interpretations of the past. By creating a shared memory, these narratives ensured that South Africans could never deny the wrongs of apartheid. Many victims who testified, however, later experienced further trauma and dependency but did not receive much-needed psychological support. Not only was the unavailability of psychological support problematic, but even where it was available, many victims did not prioritize mental health care because the social problems and poverty of their daily lives was so overwhelming. These problems, as well as the many successes of South Africa’s truth-telling experience, may be of great relevance to other countries pursuing truth and reconciliation commissions.

2. Truth-Telling in Uganda

In northern Uganda, amnesty will not become a genuine tool for reconciliation unless it also includes a mechanism for dialogue and truth-telling. The admittance of guilt by former combatants would help to foster the conditions necessary for reconciliation to take place. As Jeremy Sarkin asserts, “[f]acilitating an open and honest dialogue can effect a catharsis, and prevent collective amnesia which is not only unhealthy for the body politic, but is also essentially an illusion--an unresolved past inevitably returns to haunt a society in transition.” Without dialogue and truth-telling, the amnesty process could place unrealistic demands on victims and unnecessarily sacrifice the truth for peace.

Surveys by the International Center for Transitional Justice reveal that the population of northern Uganda would be overwhelmingly in favor of a truth-telling process. While only 28 percent had knowledge of the truth commissions in other countries such as Sierra Leone and South Africa, 92 percent said that Uganda needed a truth-telling process. Furthermore, 84 percent said that the population of northern Uganda should remember the legacy of past abuses. Although the population already desires a truth-telling process, a formalized process would be necessary because people fear openly discussing the war and experience shame in association with atrocities that have taken place.

A formal process could also ensure that the atrocities are sufficiently memorialized. South Africa's Truth and Reconciliation Commission could potentially serve as a model for Uganda's construction of a formal truth-telling process.

The Amnesty Commission could also encourage more dialogue at an informal level. The Acholis' traditional justice mechanisms, in their current form, do not sufficiently address the population's desire for truth-telling and reconciliation. As mentioned above, the ceremonies are not uniformly practiced and do not appear to allow for any particular process of dialogue. The extent to which communities as a whole are involved in the traditional ceremonies is reportedly unclear. Though ceremonies appear to have taken place within the camps in a few instances, the "the stepping on the egg" cleansing ceremony is usually organized by the cultural leaders and performed at the reception centers for the reporters. The Amnesty Commission could strengthen such traditional reconciliation mechanisms to ensure that greater dialogue and participation takes place. Instead of holding the cleansing ceremonies at the reception centers, the Commission could facilitate meetings between the communities and the former combatants at which reporters formally return to their communities. This could provide an opportunity for combatants to express remorse and for the victims to hear the truth.

B. Compensation in South Africa and Rwanda

This section examines the compensation systems of South Africa and Rwanda and explores their application to Uganda's post conflict situation. South Africa provides an example of how compensation may be tied to a larger truth and reconciliation commission while Rwanda alternatively exemplifies how traditional justice and reconciliation mechanisms may be codified and expanded to include compensation.

1. South Africa's Committee on Reparation and Rehabilitation

South Africa's Truth and Reconciliation Commission included a Committee on Reparations and

Rehabilitation that made recommendations for symbolic reparations as well as for substantial payments to victims of gross human rights violations. When the Committee began its work in 1996, many South Africans expected that compensation would be only symbolic because of the vast number of claims and the difficulties involved in adequately compensating victims. The Committee, however, shifted its emphasis from symbolic to substantial compensation after conducting workshops throughout South Africa over two years. While the Committee did propose symbolic reparations, including memorials, reburials, renaming of streets, and days of remembrance, the Committee also proposed individual reparation grants of 17,000 rand a minimum per year for each victim for six years. The recommended grant was 23,000 rand per year for victims with many dependents or living in rural areas and the average grant was 21,700 rand, based on the median income of black South African households. In addition, the Committee determined that certain victims required urgent interim relief, including those who had lost a wage-earner, who required psychological support after testifying, who required urgent medical attention, or who were terminally ill and not expected to live beyond the life of the Commission.

Despite these substantial recommendations by the Committee, the reparations process in South Africa has generated significant dissatisfaction among victims. First, the government was very slow to respond to the TRC's recommendations about payments to the 22,000 victims. In 2003, five years after the recommendations, President Thabo Mbeki's administration announced that only 30,000 rand could be paid in total to each victim who wanted reparations. Second, the Promotion of National Unity and Reconciliation Act included no requirements for reparations from perpetrators or beneficiaries of apartheid. The Act did not call for reparations directly from perpetrators to victims even though under traditional systems, ubuntu requires ulihlawule (paying the debt) by the one who violates community law. The Act thus broke this link between the violation and the obligation. In addition, discussions about a wealth tax on the beneficiaries of apartheid fell by the wayside when

Mbeki came into office in the spring of 1999.

2. Rwanda's Compensation System

Rwanda, by contrast, developed a compensation system linked not to a truth and reconciliation commission, but to its court system. Rwanda's Organic Law of 2000 establishes gacaca courts and organizes prosecutions for genocide and crimes against humanity committed between October 1, 1990 and December 31, 1994. Following the 1994 Rwandan Genocide, the gacaca courts grew out of the government's struggle to detain and prosecute over 100,000 people charged with genocide, war crimes, and crimes against humanity. Rwanda's Organic Law codified a somewhat modified version of Rwanda's traditional law dispute resolution mechanism whereby village elders would assemble all parties to a dispute in order to mediate a solution. The Organic Law designed a participatory judicial system that would involve a large part of the Rwandan population as judges or witnesses. The Law's provisions for compensation for victims of the Rwandan genocide are of particular relevance for the purposes of this paper.

Within the Organic Law, Chapter 7 concerns damages and article 90 therein establishes a Compensation Fund for Victims of Genocide and Crimes Against Humanity. Under Article 90, both ordinary jurisdictions and gacaca jurisdictions were obliged to forward copies of rulings and judgments to the fund which shall indicate: (1) "the identity of persons who have suffered material losses and the inventory of damages to their property"; "the list of victims and the inventory of suffered body damages"; and (3) "related damages fixed in conformity with the scale provided for by law." Based on the damages fixed by jurisdictions, the Fund then fixes the modalities for granting compensation.

3. Compensation in Uganda

In post-conflict northern Uganda, a compensation system similar to that of Rwanda or South Africa could work towards adequately addressing victims' interests. Compensation could serve victims' interests by indirectly acknowledging their injuries and by supporting their efforts to overcome those injuries or to live in peace despite them. In an interview

conducted by the International Crisis Group, President Museveni apparently acknowledged that benefits for former LRA members must be balanced by benefits for the LRA's victims, both as a matter of equity and to generate support for the DDR.

According to the International Center for Transitional Justice (ICTJ), a compensation system would be responding to relatively widespread opinion that victims of the conflict should receive some form of reparations. Of those surveyed by the ICTJ, 52 percent wanted victims to receive financial compensation and 58 percent thought that such compensation should be for the community as opposed to individual victims. While a majority (63 percent) of respondents believed that the return of IDPs to their villages should be prioritized once peace is achieved, respondents also gave priority to rebuilding village infrastructure (29 percent), providing compensations to victims (22 percent), and providing education to children (21 percent). The following therefore describes how the government of Uganda has not responded to the interests of victims in compensation and how the Amnesty Act could be expanded to include compensation for victims as well as communities.

Neither the Amnesty Act nor Acholi traditional mechanisms currently provide victims with significant compensation. The Amnesty Act, in fact, provides no compensation for victims but instead provides the perpetrators with resettlement packages. Though *mato oput* is supposed to include compensation in the form of cattle or money, such payments may no longer be possible because the vast majority of the Acholi population now lives in an impoverished state in the IDP camps. In addition, former LRA rebels escape from the bush with no ability to offer any compensation themselves. This paper therefore argues that the government of Uganda could pay compensation to the victims of the LRA's atrocities by funding the compensation mechanism embodied in *mato oput*. Alternatively, if the government of Uganda were to establish a truth and reconciliation commission, then South Africa's experiences with reparations could provide a useful guidepost for Uganda. A compensation system for the victims of LRA atrocities could certainly be incorporated within

a broader truth and reconciliation commission, as was done in South Africa. The following, however, focuses on how Uganda could model its compensation system on the one set forth in the Organic Law of 2000 for Rwanda's gacaca courts.

While Uganda will probably not implement the equivalent of Rwanda's gacaca courts, the compensation system set forth in the Organic Law of 2000 could still be of some relevance to the victims of the LRA in northern Uganda. Rwanda's Organic Law demonstrates how government-funded compensation can take place through traditional justice mechanisms, as opposed to a truth and reconciliation commission. Like Rwanda, the government of Uganda could strengthen its traditional mechanism, *mato oput*, by pledging to provide the funds for the compensation upon which the parties have agreed. The Amnesty Commission could establish a compensation fund under its power to "perform any other function that is associated or connected with the execution of the functions stipulated" in the Act. Because the Commission's functions include promotion of reconciliation, a compensation fund would seemingly be a permissible expansion of the Commission's current operations. Parties performing *mato oput* could agree upon an appropriate level of compensation and then submit a claim to the compensation fund. The Commission could issue guidelines for parties to use when determining appropriate levels of compensation.

Rwanda could also serve as a useful example of how broad poverty reduction, in addition to compensation for individual victims or clans, may contribute to reconciliation. Poverty reduction is in fact one of the priorities of the RPF (Rwandan Patriotic Front) led government, as President Kagame has reiterated in public statements. For Rwandans whose livelihood was destroyed during the genocide, economic assistance may lay the groundwork necessary for the process of forgiveness and reconciliation. Similarly, in northern Uganda, compensation for communities as a whole could also play an important role in helping the region to achieve reconciliation. The government could focus on providing the infrastructure necessary for the Acholi to achieve rein-

tegration because northern Ugandans cannot truly reintegrate the former rebels until they have left the IDP camps and returned to their homes. Communal compensation could therefore concentrate on rebuilding infrastructure, resettlement packages for farming, and resources for education.

"For Rwandans whose livelihood was destroyed during the genocide, economic assistance may lay the groundwork necessary for the process of forgiveness and reconciliation."

Measures aimed at broader poverty reduction beyond support for reintegration could also be an important tool for achieving national as well as regional reconciliation. The International Crisis Group writes of how the North-South divide in Uganda must be bridged so that the Acholi feel that they are a part of Ugandan society. Unifying the country would require "specific political, economic and social initiatives aimed at building the North's connections with the central government while enhancing autonomy and localized decision-making." Such initiatives could include post-conflict reconstruction assistance through support for agricultural production, affirmative action through scholarships and employment opportunities, social reform, settlement and reintegration of IDPs, and psychological and social support for former LRA rebels and victimized communities.

4. Justice in Sierra Leone and in Uganda

The experience of the Special Court for Sierra Leone is highly relevant to the situation in northern Uganda because the Special Court narrowly focused on prosecuting only those bearing the greatest responsibility for the civil war in Sierra Leone. In June 2000 Sierra Leone's President Ahmad Te-

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jan Kabbah requested the assistance of the international community in establishing a court to try high level Revolutionary United Front (RUF) officers. Having taken RUF leader Foday Sankoh into custody in May 2000, the government was apprehensive that a national trial of Sankoh and other RUF leaders would aggravate the conflict and produce further instability. By January 2002, the government of Sierra Leone and the United Nations had concluded the Agreement on the Special Court, thereby establishing a hybrid national and international tribunal based in Freetown, Sierra Leone.

The Special Court's Statute limits the Court's prosecutorial scope to only "those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law" committed during the conflict. The Court's limited prosecutorial discretion enabled the Court to keep its time frame relatively short and its costs relatively low, as compared with the ad hoc tribunals for Rwanda and the former Yugoslavia. The Court only indicted thirteen persons, and eleven arrests resulted, including that of former Liberian President Charles Taylor in March 2006. While questions linger about whether such limited prosecutions will produce incomplete or unsatisfactory justice in Sierra Leone, the recent arrest of Charles Taylor will likely have a highly significant impact on the Court's ultimate credibility as well as Sierra Leonean perceptions of the Court.

The Special Court for Sierra Leone is especially relevant to the situation in northern Uganda because limited prosecutions of the LRA by the International Criminal Court or by a mixed-tribunal like that of Sierra Leone, are currently the only practicable and available, though questionably desirable, option for Uganda. In post-conflict northern Uganda, the widespread use of retributive justice would not be an effective tool for achieving reconciliation. This paper certainly acknowledges, however, that mass justice can play an important role in other post-conflict societies, such as Rwanda. Many argue that justice can theoretically deter similar acts in the future by ensuring respect for human rights and the rule of law. In fact, "[t]he basic argument in support of prosecution is that trials are necessary in order to bring violators of

human rights to justice and to deter future repression." Yet prolonged trials of all or most of the LRA perpetrators on the scale of those adopted in Rwanda (through the ordinary courts, the Gacaca and ICTR) would be inappropriate in northern Uganda for the following reasons.

First, on a pragmatic level, northern Uganda could not accommodate mass prosecutions of former LRA rebels. Northern Uganda currently lacks the infrastructure necessary to conduct trials for UPDF soldiers, let alone the thousands of former LRA rebels. The courts are grossly understaffed and little or no judicial presence exists in the Kitgum and Pader districts. As of March 2005, a large backlog of cases two to three years old existed in Gulu because no High Court judge had sat in Gulu for more than five months. Thus the judiciary's capacity to guarantee fair trials is very limited and the resources necessary to rebuild the judiciary and to support mass justice in the Acholi region could perhaps be better spent on other initiatives geared more directly towards reconciliation.

Second, even a less expensive, mass justice system such as the gacaca courts in Rwanda would be inappropriate for northern Uganda because of the circumstances of this conflict and the cultural norms of the victims. Trials would not be suitable for most of the perpetrators of the atrocities in northern Uganda because the vast majority of the reporters were abducted as children into the LRA and carried out atrocities while essentially under duress. Deterrence has a very limited role to play because most of the perpetrators would not have voluntarily joined the LRA or committed atrocities. Thus criminal justice for all former combatants in the LRA is inappropriate given the identity of the perpetrators and the circumstances surrounding their crimes. Additionally, the victims and perpetrators most probably belonged to the same families and neighborhoods and finding credible evidence against them would prove elusive, as most of the Acholi had mixed feelings about the LRA war, which they believed was imposed on them by the Museveni Government, which Kony was attempting to overthrow.

Furthermore, widespread use of retributive justice would conflict with Acholi traditions

and with the current perspective of the population in northern Uganda. The Acholis' traditional mechanisms are geared towards reconciliation and reintegration rather than attaining justice through punishment. Interviews conducted by various NGOs note that interviewees generally wish to forgive the perpetrators for the sake of peace after so many years of conflict. Also, according to a survey conducted by the International Center for Transitional Justice, 58 percent of respondents did not want low ranking members of the LRA to be held accountable for their crimes. However, 66 percent of respondents wanted to see the LRA leaders who are responsible for the violations held accountable through punishment such as trial and imprisonment. The following therefore discusses how the International Criminal Court or a similar judicial alternative could play an important role in achieving justice by bringing the LRA leaders to trial.

Prior to Museveni's shift in attitude towards the International Criminal Court, the ICC had the potential to play an important role in national as well as regional justice. In light of the historic distrust between Uganda's north and south, credible international trials could function as a depoliticized venue for justice, if and when the LRA's top leadership is arrested. As in Sierra Leone, prosecution by an international body could help to prevent the political instability that could result from national prosecutions. Some Acholis, however, have reportedly perceived the ICC referral as an anti-Acholi policy aimed at foiling peace negotiations and prolonging the war to keep northern Uganda weak. The ICC has consequently made significant efforts to explain its mission to communities in northern Uganda that have been concerned about the implications of the ICC process and their right to continue to use traditional reconciliation procedures. Because of increased contact between Acholi leaders and ICC officials, a spirit of cooperation in northern Uganda reportedly replaced suspicions about the Court's intentions. Within this context of cooperation, Uganda's decision to relinquish jurisdiction to the ICC could allow the ICC to function as an instrument achieving justice and full closure of the conflict.

The ICC's prosecutions or similar judicial

mechanism could also help to promote regional peace by ensuring that the Amnesty Act does not amount to total impunity. Through its referral to the ICC, Uganda essentially withdrew its offer of amnesty to the top leadership of the LRA. While prosecution of the lower ranking former LRA rebels would not be appropriate or possible, as discussed above, trials for the leaders might signify some degree of accountability and justice, however limited. Despite the very small number of prosecutions, the trials could nonetheless be significant if those most responsible for the atrocities were held accountable and brought to justice.

However, a very important caveat to the above analysis stems from Museveni's relatively recent change of position regarding the ICC indictments. If the ICC indictments will ultimately prevent the government of Uganda from successfully negotiating a peace deal with Kony and the other LRA leaders, then the ICC trials will in fact be exacerbating, rather than diminishing, northern Uganda's instability. It may thus be more appropriate to institute a mixed-tribunal along the lines of that adopted in Sierra Leone in order to ensure that Uganda can pursue justice but also avoid creating the perception that the trials are retribution by the southern-dominated Ugandan Government against northern Uganda.

Conclusion

This paper aims to contribute to the discussion of Uganda's approach to conflict resolution and reconciliation by examining the tension between Uganda's current traditional reconciliation mechanisms and Amnesty Act, and the international outcry for justice. With only the Amnesty Act and the traditional Acholi ceremonies in place, any reconciliation would be hindered by Uganda's failure to adequately address the interests of LRA victims. While the path to reconciliation in Uganda would be difficult and uncertain, at least the experiences of other African countries like Rwanda, South Africa, and Sierra Leone could offer useful examples upon which Uganda could draw. Rwanda's *gacaca* courts offer guidance as to how Uganda could combine the use of its traditional conflict resolu-

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tion and reconciliation mechanisms with the pursuit of justice, and with community participation. Uganda could conceivably promote compensation as well as dialogue through the Acholi traditional mechanisms while at the same time maintaining the integrity of those traditional customs. Alternatively, should Uganda formally establish a truth-telling process, it could look to the Truth and Reconciliation Commission of South Africa as an example of how another African country promoted dialogue and forgiveness. Although the circumstances of Rwanda's genocide, South Africa's apartheid regime, and Sierra Leone's civil conflict differ greatly from northern Uganda's conflict with the LRA, the innovative legal approaches of Rwanda, South Africa, and Sierra Leone can serve as useful examples and as inspiration for Uganda.

Notes

UN High Commissioner for Human Rights, Report on the Mission Undertaken by Her Office, Pursuant to Commission Resolution 2000/60, to Assess the Situation on the Ground with Regard to the Abduction of Children from Northern Uganda, para. 12, UN Doc. E/CN.4/2002/86 (2001).

Akhavan Payam, The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court, 99 AJIL 403, 407 (2005).

Melanie Thernstrom, Charlotte, Grace, Janet and Caroline Come Home, New York Times Magazine, May 8, 2005, 37.

Human Rights Watch, Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda, 9, September 2005, Vol. 17, No. 12(a). The unlikely alliance between the Islamist government of Sudan and the nominally Christian LRA grew out of the Sudanese government's fear that the NRM would threaten its control over the non-Islamic, non-Arab southern part of Sudan. Sudan perceived a link between the NRM and the SPLM/A and consequently supported the remnants of the forces of Idi Amin, General Tito Okello, and Milton Obote. Payam, supra note 2, at 406.

International Criminal Court, Background Information on the Situation in Uganda, Jan. 29, 2004,

available at http://www.icc-cpi.int/cases/current_situations/Uganda.html; International Center for Transitional Justice, supra note 8, at 14.

Statement by Chief Prosecutor Luis Moreno-Ocampo, 14 October 2005, available at http://www.icc-cpi.int/library/organs/otp/Uganda-_LMO_Speech_14102005.pdf.

Helena Cobban, Uganda: When International Justice and Internal Peace are at Odds, The Christian Science Monitor, Aug. 24, 2006.

Tristan McConnell, Side Talks Could be Key to Northern Uganda Peace Process; Families of LRA Rebels and Traditional Leaders Will Meet This Week Before High-Level Talks Restart Next Week, The Christian Science Monitor, July 26, 2006. Tristan McConnell, Fresh Hope for Peace in Northern Uganda? Talks Between LRA Rebels and Uganda's Government Could Begin as Early as This Week, The Christian Science Monitor, June 26, 2006.

Tristan McConnell, Uganda Sees Local Justice as Key to Peace; Talks Raise Hopes That a Central African Conflict Involving the Lord's Resistance Army is Winding Down, The Christian Science Monitor, Sept. 8, 2006.

At the end of January 2005, there were 14,695 reporters, according to the Ministry of Internal Affairs. Refugee Law Project, Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long Term Reconciliation, 7, February 2005.

International Center for Transitional Justice, supra note 8; Accord: Initiatives to End the Violence in Northern Uganda, Reconciliation and Justice: 'Mato Oput' and the Amnesty Act.

Jeremy Sarkin, CARROTS AND STICKS: THE TRC AND THE SOUTH AFRICAN AMNESTY PROCESS, 51-52 (2004).

Eugenia Zorbas, Reconciliation in Post-Genocide Rwanda, African Journal of Legal Studies 29, 37-38 (2004).

International Crisis Group, Understanding and Solving the Conflict, 14 April 2004, 23.

International Center for Transitional Justice, Hybrid Courts Case Study: The Special Court for Sierra Leone Under Scrutiny, p. 10, 14, 5 March

2006.

Jeremy Sarkin, *The Tension Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide*, 45 J. Afr. L. 143, 147 (2001).

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THE CHALLENGES AND OPPORTUNITIES OF USING AFIRCA'S PET AND MINERAL RESOURCES FOR POVERTY ALLIVEATION

BEDE NWE TE

ABSTRACT: The near total dependence of the world's economy on oil, gas and mining has translated over time to increased revenue for countries and continents rich in these resources, and the world will continue to depend on them for the supply of these resources for a very long time to come. African countries have in this way amassed huge revenues from these resources. Ordinarily, this should translate into economic growth and an improved standard of living for the African countries, but a lack of transparency over the handling of revenues, along with structural deficiencies in the regulatory and economic framework, have given way to corruption. Thus, despite a massive influx of money from these resources, Africa has experienced shocking cases of hunger, poverty, conflicts, wars, human rights abuses, and stagnated development. This has further brought along with it 'Dutch Disease' and a lack of human capital development, which has made Africa continuously dependent on foreign aid for its social and economic development. Today, Africa is on the cusp of a large oil boom from the Gulf of Guinea to the Mediterranean coast line, and a large mineral boom from the South to the North of Africa, presenting good opportunities for Africa to experience economic growth and development. But the challenge today is how to create a framework for turning Africa's petroleum and mineral wealth into viable post-natural resource economies, aimed at poverty reduction and human capital development. This paper reviews the above issues with a view to finding solutions to the problems and suggesting ways by which the opportunity afforded by Africa's Petroleum and Mineral wealth can be used to overcome Africa's endemic obstacles to economic growth, thereby fostering poverty alleviation and political stability.

KEY WORDS: Poverty Alleviation, Economic Growth, Petroleum and Mineral Wealth, Corruption, Dutch Disease, Political Conflict, International aid, Transparency

1. Introduction

The world's economy today depends largely on the extractive industries for its sustenance, and this has translated in large measure to increased revenue for continents and countries rich in these resources (Nwete 2004). The revenue from these resources should naturally lead to economic growth and improvement in the standard of living in resource rich (RR) countries. But Africa remains a paradox as a continent with both massive Petroleum and Mineral (P&M) wealth and the greatest number of the world's poorest people. Rather than improving the standard of living for Africa's poor, investments and revenues accruing from its P&M resources have instead left in their trail sustained misery, political conflicts (Wantchekon, 2004), wars, hunger, poverty, stunted economic growth, environmental degradation, and human rights abuses. These problems, linked to Africa's P&M wealth (the 'paradox of plenty' or 'resource curse'), have led to 'Dutch disease' (Karl, 1997) and the economies of many RR African countries having their tradable sectors crowded out.

It has been thought that Africa's P&M wealth will help to break the cycle of poverty and underdevelopment plaguing the continent (Garry and Karl, 2003) but this appears not to be so. Rather, much of Africa, and especially the RR states, have been plagued by corruption, poor governance and economic decay, which has created a whirlwind of suffering among its people. As a result, Africa largely depends on international development aid, despite the fact that, if well-managed, profits generated from its P&M wealth could tackle the problems of poverty and underdevelopment in the continent, thereby contribut-

ing to economic growth and stemming the tide of civil and political conflict (See table 1), which most often are fuelled by a scramble to control these resources (Ross, 2003; Darimani, 2005). The P&M wealth has led to innumerable conflicts and vicious wars in Africa (Ross, *ibid*; Lwanda, 2003)-see table 1, leading to massive looting both by the political elite and ‘rebels.’ As a consequence, a life of misery and poverty is visited on the populace, particularly women and children (turned to child soldiers). This has also exacerbated the Sudanese conflict, making it difficult for any meaningful UN sanction to be applied to Sudan. China’s investment of over \$8 billion in the oil sector, as well as China’s arms supply to Sudan (Durrant, 2006), have been responsible for this challenge.

The bloodshed, misery and poverty engendered by illicit/blood diamonds in Africa has led to the initiation of the UN backed Kimberly Process Certification Scheme in Southern Africa. Aside from this, lack of transparency in the tender and bidding process for P&M acreages, and the mismanagement of huge revenue from the resources has also ensured the diversion of public funds into private pockets and left the people reeling in abject poverty and want. (Eigen-TI, 2004; Eshelby, 2004) The result is poor and negligible investment in social infrastructure and basic services, and the erosion of human capital development, while the continent reels under the burden of external debt and a reliance on external aid and the IDA (International Development Agency) for the basic necessities of life.

Furthermore, economic and social growth in most RR African countries has been quite dismal (Ross, *ibid*) due to the above reasons. Thus most African countries suffer high levels of economic hardship and poverty with low GDP, and are in the low and lower-middle-income countries group by World Bank (WB) ranking (WB, 2006). The educational and health systems in these countries remain in a state of decay, while social services like electricity and access to fresh water supplies are either poor or non-existent. Unemployment remains at its highest peak. The poverty of Africa’s people, its economic decay and underdevelopment have become a ‘celebrated’ issue around

Table 1: Natural Resource Fuelled Conflicts in Africa)

Country	Dates- year started	Natural Resources
Algeria	1992	Oil and Gas
Angola	1975	Oil and Diamonds
Chad	1980	Oil and Uranium
Congo Brazzaville	1993	Oil
Congo- DR	1993	Copper, Cobalt, Coltan, Diamond, Gold, Uranium
Liberia	1989	Diamond, Iron, Rubber
Sierra Leone	1991	Rutile
Sudan	1983	Oil

Adapted from Lwanda, (2003) oil is also behind the continuous conflict between ‘militants’ and security agents in the Niger Delta region of Nigeria.

the world, from NGOs (World Vision, 2006), to the UN, leading to the signposting of Africa’s poverty at the 2005, G8 Gleneagles summit. This state of affairs prompted Thabo Mbeki earlier on in 2002 to call for assistance to end Africa’s humiliation as “an object of charity” (BBC, 2006). But despite this, Africa cannot live on the charity of the G8 (AlGathafi, 2005) or international aid.

What has been responsible for this poor state of affairs in Africa? Colonialism and slave trade are always blamed as the beginning of Africa’s march to poverty and underdevelopment, but the fact remains that African countries have trailed behind other countries like Australia and New Zealand that were also subjected to colonialism (Oluwatuyi, 2004). Though colonialism and the slave trade had a role to play in decimating Africa’s wealth and human population, they are not the reason behind Africa’s present poor state of affairs. Rather, the structural deficiencies in the regulatory and economic framework in many countries promote an incompetent and predatory leadership that breeds poor governance, weak

social structure and the absence of rule of law, which provide a leeway for corruption and lack of transparency and accountability over revenue accruing to state coffers. For instance, in 2005, the government of Chad amended its Petroleum Revenue Management Law to reduce its poverty alleviation obligation under the law (Blustein, 2006).

It is not acceptable that Africa should continuously depend on aid from international donors to alleviate poverty and sustain economic growth in the continent, while revenues generated from its resource wealth are continuously plundered and mismanaged. It is the failure to address issues of this nature that has found Africa where it is today. Africa and its leadership need to create a policy and framework environment for turning its P&M wealth into viable post-natural resource economies aimed at poverty reduction and human capital development. This paper examines the above issues within the context of the failures and successes of African states in this respect, with a view to providing a basis for the initiation and development of more efficient and effective policies on good governance, transparency, accountability, management and monitoring of resource revenue, and the enactment of P&M resource extraction laws that promote social justice and development, backed up by political will, to ensure economic growth, political stability and poverty alleviation in the continent.

The paper first addresses the issue of P&M wealth in Africa, to provide a useful basis for analysing how this wealth can contribute to poverty alleviation in Africa. This is followed by an analysis of Africa's poverty and its challenges. The next section then looks at the prospect and opportunities of overcoming the challenges, while the last section concludes with suggestions on how to use the P&M wealth to sustain economic growth and break the circle of poverty in Africa, putting it on the road to achieving the MDGs (Millennium Development Goals).

2. Africa's Petroleum and Mineral Wealth

The African continent enjoys a relative abundance of P&M resources and remains an important player in the international oil market, producing about 10 percent of the world's total oil output

(Nwete, 2006). Improvements in offshore technology for oil exploration and production, as well as insecure supplies from the Middle East, have also attracted much attention to Africa. Thus the continent, especially the Gulf of Guinea, has become the centre piece of international oil and gas. Today, Africa is on the cusp of a large oil boom spanning the Gulf of Guinea to the Mediterranean, attracting an annual investment of over \$200 million to the petroleum industry alone. Its mineral wealth spans from the south to the north of the continent presenting good opportunity for Africa's economic growth and development.

It is estimated that African governments will receive over \$200 billion in oil revenues over the next decade (Garry and Karl, *ibid*). This estimate was based on an oil price of less than \$40 dollars a barrel but putting into consideration the current price of about \$70 a barrel, the amount would be over \$300 billion. Thus the money received by RR African countries more than triples the amount of annual international aid to the continent which in any case has been on the decline- the UK government had pledged to increase its aid to Africa to \$1.79 billion a year by 2005/06 (Benn, *ibid*). Nigeria is estimated to have received over \$340 billion in oil revenues in the last 40 years (Garry and Karl, *ibid*). Going by the current oil price, it will receive more than 10 percent of this amount in this year alone. These figures do not include the stolen revenue. Nigeria is said to have lost about \$400 billion from oil revenue to corrupt leaders (Adebowale, 2006). Angola's new deep-water production is projected to generate over \$7 billion dollar annually (Nwete, 2004) in addition to other sundry income that accrues to the government from other fields in the country. This amount, based on a price benchmark of \$18-20 a barrel, will be about \$28 billion in consideration of the current oil price. Oil and diamonds are said to be the twin pillars of Angola's wealth and its poverty (Paivi, 2005; Nwete, 2005). This is the story of all RR African countries with few exceptions-see table 2.

Africa has also been a target for mineral exploration from pre-colonial times, and this continued well into the last decade; between 1997 and 1998, Africa was only second to Latin America as

Table 2: P & M Producing Countries in Africa and 2005 HDI Ranking

Country	HDI Ranking
Algeria	103
Angola	160
Benin	162
Burundi	169
Botswana	131
Cameroon	148
Central African RP	171
Chad	173
Congo (Brazzaville)	142
Congo DR	167
Cote d'Ivoire	163
Egypt	119
Equatorial Guinea	121
Gabon	123
Gambia	155
Ghana	138
Guinea	156
Guinea-Bissau	172
Kenya	154
Liberia	NA
Libya	58
Mali	174
Mauritania	152
Mozambique	168
Namibia	125
Niger	177
Nigeria	158
Sao-Tome and P	126
Senegal	157
Sierra Leone	176
South Africa	120
Sudan	141
Tanzania	164
Tunisia	89
Togo	143
Uganda	144
Zambia	166
Zimbabwe	145

Source: <http://www.infoplease.com> and the UNDP Human Development Report 2005.

the favoured destination for mineral exploration. Since then, it has continuously attracted about 15 percent of total global investment for mineral exploration (Foster, 2000). According to Pegg (2003), Africa's vast petroleum and mineral wealth have long been prized by its leaders, coveted by colonialists and exploited by governments and industries alike. The magnitude of Africa's natural resource wealth can also be seen from the fact that (AlGathafi, *ibid*; Pegg, *ibid*):

- 50 percent of the world's gold reserves are in Africa,
- 25 percent of the world's uranium resource are in Africa
- 95 percent of the world's diamond are in Africa
- 33 percent of chrome reserves are in Africa
- 33 percent of cobalt is in Africa
- 65 percent of the world's cocoa production comes from Africa.

The irony is that African countries treat natural resources as a patrimonial inheritance and therefore vests its ownership in all the citizens including unborn ones. For instance the Angola law N0. 13/78 of August 26, 1978 vest ownership of these resources on the citizens, but contrary to these provisions, the revenue from these resources are treated as the inheritance of a few-namely, the political elite. Though there has been disagreement among development scholars over the relationship between resource extraction, economic growth and poverty reduction, the fact remains that there have been positive cases in Botswana, Norway, Malaysia and elsewhere in Asia and South America, and where this has not been so, it has not been as bad as it is in Africa. The disturbing record of RR countries in Africa to date, however, suggests that Africa's resource boom can only have a positive impact on poverty alleviation and economic growth if urgent and significant changes occur in the policy environment for natural resource development, revenue management, and the IDA. The alternative for Africa's poor would be quite disastrous (Garry and Karl, *ibid*)

3. The Challenges of Poverty in Africa

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Poverty in Africa is manifested in the form of low and unpredictable wages, and lack of access to social services like quality health care delivery systems, quality education, fresh water supplies, sustainable electricity supply, sufficient transportation, clothing, food and decent shelter. Abject poverty is the lack of access to any form of these. Poverty denigrates the human person and denies him the right to live and think as a rational being, inhibiting him from achieving his full potential. The majority of Africans are caught between the misery of poverty and abject poverty. The images of Africa's poverty are shown daily on television sets across the world by the international media and NGOs soliciting aid to help Africa's poor with clothing, food, health, shelter and education.

The hope placed in resource wealth by the African poor is endless: As they watch mines being excavated for minerals, rigs being installed and new pipelines running through their communities, they are assured that following on the heels of these activities would be jobs, healthcare, and food, new schools with books, electricity and water supply (Garry and Karl, *ibid*). But the hope

Table 3: UNDP: HDI Ranking Reflecting Africa's Poverty

"Least Livable" Countries, 2005

1.	Niger	11.	Congo, Dem. Rep. of
2.	Sierra Leone	12.	Zambia
3.	Burkina Faso	13.	Malawi
4.	Mali	14.	Tanzania
5.	Chad	15.	Cote d'Ivoire
6.	Guinea-Bissau	16.	Benin
7.	Central African Republic	17.	Eritrea
8.	Ethiopia	18.	Angola
9.	Burundi	19.	Rawanda
10.	Mozambique	20.	Nigeria

Source: Human Development Report, 2005, United Nations. Web: hdr.undp.org

The significant thing about the table is that all the countries considered to be the worst place to live in the world are in Africa. This puts Africa on the forefront of poverty and lack of economic growth.

is usually turned to disillusionment as these are never provided. It is estimated that over 300 million Africans live on less than \$1 a day (Akukwe, 2005; Benn, *ibid*). The war in Angola displaced about 4.3 million people in need of humanitarian assistance, prompting the UN in 2003 to appeal for \$384 million for humanitarian aid and development. But Angola was capable of providing this sum from its oil revenue (Garry and Karl, *ibid*). Preventable diseases ranging from cholera to river blindness ravage Africa while HIV/AIDS remains one of the greatest scourges on the continent; Africa bears the brunt of the global AIDS epidemic having lost 13 million of its people to the disease, while over 26 million people are living with the disease (Benn, *ibid*; UN, 2006). Tables 3 and 4 tell the story of Africa's poverty.

Pregnant women in Africa are 100 times more likely to die in pregnancy/childbirth than their counterparts living in the UK (Benn, *ibid*). The child mortality rate in Africa remains one of the world's highest while the number of school enrolment continues to decrease. Poverty is driving Africans away from their homelands to Europe and America in search of the fabled greener pasture, as there is no assurance of employment at home.

RR African countries continue to occupy unenviable positions as the most corrupt and poorest countries. 34 African countries are ranked under Heavily-Indebted Poor Countries (HIPC) index. The WB, in 1988 estimated that the cost of

Index	Sub-Saharan Africa	South Asia	Latin America and the Caribbean
Reduce extreme poverty by half	a	c	b
Reduce hunger by half	b	b	c
Reduce mortality of under 5yr olds by 2/3	a	b	c
Measles immunization	a	b	d
Halt and reverse spread of HIV/AIDS	a	a	b
Halt and reverse spread of Malaria	a	b	b

Source: United Nations. A dismal picture of Africa's MDG challenge- general result: no progress/deterioration and reversal

providing safe water supplies in Nigeria's rural and urban areas within 20 years was \$4.3 billion. This amount is nothing compared to the over \$400 billion stolen from oil revenue (Adebowale, *ibid*) and public funds squandered on white elephant projects (Obadinah, 2005). The problems and challenges of Africa's poverty constantly attract world attention (Blair's Africa Commission), and the contradiction it presents in terms of poverty in the face of resource wealth led to the Publish What You Pay (PWYP) campaign and the Extractive Industries Transparency Initiatives (EITI), both of which seek to enthrone transparency and proper management of natural resource wealth in

developing countries as a way of making the resources beneficial to the greater percentage of the population. The WB action in Chad was geared towards the same direction. Rather than embracing the PWYP which requires extractive industries to compulsorily publish net payments made to resource owning governments as a condition for being listed on international stock exchanges and financial markets, and for attracting funding for energy and mining projects from IFIs and other MCAs, countries in Africa are instead embracing the EITI which is voluntary and depends more on peer pressure (Nwete, *ibid*). The challenges of poverty in Africa can only be overcome if the resource owning governments in Africa become accountable over the resource revenue by exercising the political will to address these issues.

4. Opportunities for Poverty Alleviation

The huge P&M wealth, coupled with very high commodity prices, offer Africa opportunities more than any other time in its history, to overcome its poverty and under-development and foster economic growth and political stability. The revenue from these resources has never been greater in the history of the continent. Africa's economy is estimated by a recent report of the OECD to have grown by about 5 percent in 2005, and there is much expectation that it will grow better in the subsequent years (The Economist, 2006). This growth has largely been attributed to the increasing global hunger for oil, minerals and other commodities (*Ibid*). The soaring prices of oil and mineral, and other commodities, all of which have seen an astronomical increase in prices of up to 90 percent for oil and 70 percent for minerals and other commodities since 2000 (*Ibid*), have brought much revenue to government coffers, but other factors like debt relief, regional initiatives like NEPAD and other efforts being made for Africa at the international level (Agbana, 2006; Musunka, 2005), have all combined to usher in economic growth of about 15 percent in Angola, and 6 percent in Uganda etc.

Constant monitoring by the International Civil Society has put the eyes of the world on the continent and as result, efforts are being made

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to ensure transparency of resource revenue by adopting the EITI template. The WB and IMF's HIPC initiative saw to the granting of debt relief to 25 African countries last year, and this has brought some measure of relief to the economy. The number of resource-induced conflicts in Africa continues to decrease by the day and Angola, Sierra Leone and Liberia are gradually breathing a fresh air of peace while elections have recently been held in Congo. These have all brought in fresh hope and as a result FDI to Africa was about \$18 billion in 2004, tripling the annual average of FDI into the region since the 90s (The Economist, *ibid*). But these efforts have not been enough to reduce the poverty level in Africa and set the continent on the path of achieving the MDGs—see table 4. For instance, real income per person in Africa rose only by 25 percent between 1960 and 2005 but went up in East Asia about 34 times faster within the same period (*ibid*). The amount of foreign aid to Africa has been on the decline but corruption continues to increase. This has brought about doubt as to whether African leaders will spend the windfall from the high resource prices wisely, to provide the basic things of life for its citizens while ensuring economic growth that will cushion the effects of any future dip in the prices of oil, minerals and other commodities.

Will African leaders invest their windfall into human capacity development and the productive sector of the national economy? According to UNCTAD, Africa's export of manufactured goods only managed to rise to less than 6 percent a year since 1980 (*ibid*). Oilfields and mines have little economic linkages and hence create very few jobs but the revenue they generate can be ploughed into other sectors of the economy to create employment opportunities. Unfortunately the absence of investment supporting structures and research centres in the continent has also led to huge capital flight from the continent (AGAO, 2001). The P&M sectors are technologically driven hence almost all the equipment used in the industry are imported from abroad. The money stolen from the revenue accruing from these resources by local elites are also transferred abroad and either used to purchase houses or kept in foreign bank accounts.

Only a small percentage of the earnings from the P&M wealth are re-invested in the continent.

There cannot be any meaningful economic growth or development in this circumstance while the ability to tackle poverty alleviation is greatly reduced. Mauritius, Cape Verde Islands, Botswana, Namibia, Ghana, and Seychelles Island are the few countries in Africa noted as being able to meet a significant part of the MDG (The Economist, *ibid*). Economic growth and poverty alleviation will be a mirage without development, because development facilitates democracy by improving living standards which breeds political tolerance, and helps elites voted out of office to continue at least a life of minimal comfort (John, 1997), thereby reducing the urge to cling to power, and political conflicts. Development also enlarges the middle class, which is the chief support of democratic institutions (*Ibid*).

The fact that P&M wealth accounts on the average for about 50 percent of GDP in RR African countries shows its importance to the economy and the fact that its mismanagement portends serious economic and social consequences for the continent. P&M wealth must therefore be used for industrial development in Africa to stem the tide of political conflict, economic hardship and poverty. Africa must use this period to initiate efforts that utilize its vast P&M wealth to “educate its people and make them healthier, to nurture local businesses, to expand irrigation, to build roads, and lay on water and electricity” (The Economist, *ibid*). These resources should also be used to provide employment and housing and accountable and honest government, to open the doors of participatory democracy and create a stable polity, to give its people the deserved responsibility of holding governments accountable, and to provide opportunity of access to justice institutions, even against the will of the leadership.

4. The Way Forward

Addressing the above problems requires a serious rethinking of the policy and legal environment under which these resources are exploited, along with the political will of each government to imple-

ment the needed reforms. It is imperative that for progress to be made in this respect the following issues need to be addressed: IDA and debt relief to RR countries should be tied to transparency of resource revenue and the implementation of legislation-backed EITI. Thus resource extraction laws should be amended to allow for more transparency and accountability in the process. There is also the need to enact resource revenue management and information laws to ensure that revenue from the resources are well managed while giving the citizens the opportunity to access information on the revenue from the relevant government agencies, as well as access to the courts in the event that they are not satisfied with the process. Treating issues of this nature as issues of public interest and bringing them under the purview of public interest litigation will go a long way toward initiating the culture of public participation and the protection of public interest in resource extraction, while ensuring that governments becomes accountable to the people. The political will to implement the laws and an independent and a fearless judiciary are necessary for this to work.

The policy framework for P&M extraction and revenue sharing should also provide for an annual commitment of not less than 10 percent of resource income to the provision of social infrastructure and poverty alleviation projects particularly in the rural areas for the next 20 years. This can be done in conjunction with other development agencies or the WB under counterpart funding schemes. This amount will go into direct provision of basic things like roads, public schools, water, electricity, health centres and the building of agricultural projects, cooperatives, and trading schemes that will empower the people. For instance excess oil revenue accruing to the Iranian government has enabled it to recently plan for the provision of 300,000 new housing units and the maintenance of energy subsidy amounting to about 10 percent of GDP (Durrant, *ibid*). RR countries in Africa can afford to do this especially for the poor and those that have been displaced by war and conflicts. The policy framework must also make mandatory capacity building and investment in SMEs in rural areas, which can be carried out

through NGOs and other interest groups. This will imbue the people with skills, making them capable of helping them overcome the challenges posed by poverty, and can be done under a PPP arrangement. Examples abound in this respect from the Angola Enterprise Programme developed in 2002 between Chevron/Texaco, the UNDP, and the Angolan government, in order to support the growth of small business and development in Angola. The initiative makes investments which contribute to:

- (1) improving the overall enabling environment for micro business development;
- (2) expanding the supply of credit to micro and small businesses;
- (3) redirecting the offer of vocational training towards the real demand of the market; and,
- (4) introducing pilot models of business development service providers as well as business incubators (UNDP Angola, 2006).

The initiative aims at substantially contributing to creating employment and income generating opportunities under the government's national poverty reduction strategy (UNDP Angola, 2006). Earlier on in 1997, the Ambriz Artisanal Fishing Project was initiated and was co-funded by BP-Amoco (US\$ 800,000) and the Equator Bank (US\$ 50,000) to support the establishment of a fishermen association in the municipality of Ambriz, Luanda (*Ibid*). If this kind of initiative is replicated in all mining and oil provinces in Africa it will accelerate poverty alleviation and economic growth.

Tackling corruption in the P&M sector as a special case must be embarked upon by the government. This is because the nature and magnitude of corruption in the sector affects every other part of the economy. The wealth in this sector drives the economy of almost all the RR countries in Africa, so what happens in this sector affects every other sector. For this reason corruption in the sector must be tackled independently of others efforts to tackle corruption generally. It is estimated that corruption annually costs Africa's economy over \$148 billion, which is about 25 percent of Africa's GDP; this increases the costs of goods by about 20 percent (Transparency International, 2005) making it more difficult for the poor to have access

to them. Corruption remains the biggest threat to Africa's development. There is need, therefore, for a standard setting on the issue of corruption in resource extraction in particular and in the economy as whole; otherwise, the revenue from the resources will not be utilized transparently to drive other sectors of the economy. Thus, the African Union's Convention on Preventing Corruption and Related Offences, which came into force on 5th of August, 2006, is a welcome development.

However, the sad thing is that the Convention has been ratified by only 15 out of 53 countries in Africa (AU, *ibid*). Among those that have failed to ratify it include P&M countries, including Angola, Botswana, CAR, Chad, CDR, Equatorial Guinea, Gabon, Guinea-Bissau, Liberia, Mauritania, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone, Sudan, Zambia, Zimbabwe, among others. It is also of vital importance that extractive industries publish what they pay to governments as this will prevent opaque accounting in the resource sector and ensure that government uses the revenue from this sector for economic growth and poverty alleviation. International agencies and donor governments should insist on inserting and implementing a non-bribery clause in all projects in the sector. The policy environment for resource extraction should encourage local content and value addition in the industry especially the upstream sector. African goods and services must be utilized to a certain degree to drive the upstream sector of the industry. This will promote technological development and the building of necessary economic linkages; it will encourage re-investment in the economy, especially in the area of manpower training, engineering and fabrication yards, and research and consultancy. This will provide the necessary catalyst for creating a technological backbone that will drive other sectors of the economy, thereby creating needed jobs and boosting economic growth. Norway owes much of its industrial success today, especially in the oil and gas sector, to its foresight in this direction (Noreng, 2004).

A natural resource fund can be established as an interventionist measure for direct poverty alleviation purposes. A certain percentage of the money accruing from the resources should be

channeled into the fund on annual basis and this can be used to provide basic social infrastructures including the initiation of projects that provide wider access to education. Such funding can also be channeled into modernizing agriculture and building new infrastructure like railways, ports, roads, bridges, provision of electricity, etc. The gain in this is the additional investment it will attract from the private sector, thereby contributing to economic growth. The Nigeria petroleum trust fund was modeled after this fashion but could not deliver a sustainable benefit due to bureaucracy and nepotism. The government can also create a stabilization fund for saving the excess fund accruing from skyrocketing prices of oil, mineral and other commodities. This will insulate the government and the economy from revenue shocks arising from the volatile and unpredictable nature of oil and mineral prices. This has actually been done in the past but governments have always been known to dip their hands into the fund to address needs that are not in line with the setting up of the fund, or embarking in spending spree during period of low prices, leaving it without any money to cushion the economy and protect the poor (Roba, 2006). This means that there must be a measure of fiscal prudence for the fund to have any positive impact on the economy. The fund can be used to drive the economy in periods of low resource and commodity prices thereby encouraging economic growth. But the fund can only work where the government is also committed to economic reforms which encourage investment in the non-minerals and oil sectors of the economy to reduce dependence on oil and minerals and encourage economic diversification and growth.

5. Conclusion

The challenges of overcoming the problems are quite enormous but the leadership still has the opportunity of emancipating the continent from years of poverty, economic hardship and political conflict by the prudent use of the enormous resource wealth that abound in Africa. This can be achieved through a change in the policy and legal environment for the exploitation of these

resources, and the use of the revenue accruing from them, backed up with the political will to run a transparent and accountable government, driven by the desire to change the landscape of poverty and economic hardship that has become the hallmark of the continent.

Notes

Angolan Law N0 13/78 of 26th

African Union Convention on Corruption, available at <http://www.africaunion.org/root/au/index/index.htm> (last visited on 20/08/06)

Chad Petroleum Revenue Management Law

Secondary Sources

Adebowale, Y., (2006), *Globacom: EFCC Arrests Babaginda's Son*, This Day Newspaper, August, 12, 2006, Agbana, G., (2006) *IFC Okays -N-3.9b grant for Africa*, The Guardian Newspaper (Nigeria), August, 2006, 1.

Akukwe, C., (2005), *Africa: How to make Poverty History, The Perspective*, available at <http://www.theperspective.org/articles/0706200501.html>. (last visited on 21/08/06).

Alexander's Gas and Oil Connections (AGAO) (2001), *News and Trend: Africa*, 21 November, 2001- www.gasandoil.com (last visited on 21/08/06)

AlGathafi, M., (2005), "If only we had listened to Nkrumah", *New African*, 443 August/September 2005, 30-37.

Blustein, P., (2006), *Chad, World Bank Settle Dispute Over Oil Money*, Washington Post, DO1.

Darimani, A., *Mineral Resource Capture and Conflicts in Africa*, available at <http://www.minesandcommunities.org/Country/africa2.htm> (last visited on 21/08/06).

Durrant, B., (August 18, 2006) *The Curse of Black Gold*, Enatres Members: enatres@jiscmail.ac.uk, August 18, 2006 .

Eigen, P., (2004) *Transparency International Corruption Perception Index, 2004*, available at <http://www.transparency.org> (last visited on 7/7/06).

Eshelby, K., (2004), *Loggers' Paradise*, BBC Focus

on Africa, 32-35.

Foster, R., (2000), *Destination Africa: new frontiers, new mineral exploration opportunities*, *International Mining and Minerals*, 3: 26, 47-53.

Garry, I and Karl, T (2003), *Bottom of the Barrel: Africa's Oil Boom and the Poor*, Catholic Relief Services, 1-110.

John, C., (1997), 1950- "Petro-Politics in Congo" *Journal of Democracy*, 8: 3, 62-76.

Karl, T (1997), *The Paradox of Plenty: Oil Booms and Petro-States*, University of California Press, 5.

Kimberley Process <http://www.kimberleyprocess.com:8080/>(last visited on 12/08/06).

Lwanda, G., (2003), *Conflict Diamond and the African 'Resource Curse'*, African Centre for Constructive Resolution of Disputes (ACCORD, South Africa), 1-5.

Musunka, M., (2005), *Africa's Development Evokes Environmental Concern*, The Times of Zambia, online 2005.

Noreng, Ø., (2004), *Norway: Economic Diversification and the Petroleum Industry*, *Middle East Economic Survey*, XLVII: 45, 15.

Nwete, B., (2004) *Transnational Corporations and the BTC Pipeline Project: Any Hope for Human Rights and Sustainable Development? Oil Gas and Energy Law Intelligence*, 2: 4, 1-15.

Nwete, B., (2004), *How Can Tax Allowances Promote Investment in Nigeria's Petroleum Industry? Oil Gas and Energy Law Intelligence*, 2: 3, 1-15.

Nwete, B., (2005), *Revenue Transparency, National Sovereignty and Authoritative Government: Any way out of the Dilemma? Paper presented at the 18th World Petroleum Congress, Johannesburg, September 2005 .*

Nwete, B., (2006), *Legal and Policy Framework for Promoting Petroleum Expertise in Africa*, paper presented at the African Petroleum Producers Association, International Seminar, Algiers, June, 2006.

Obadina, T., (2005), *Getting a Measure of African Poverty*, *Africa Economic Analysis*, available at <http://www.africaeconomicanalysis.org/articles/>

RESOURCES FOR POVERTY ALLIEVATION

[gen/povertymeasurehtm.html](#) (last visited on 21/08/06).

Oluwatuyi, M., (2004), *An African Solution for Africa's Poverty*, Acton Institute, available at <http://www.acton.org/ppolicy/comment/article.php?id=227> (last visited on 21/08/06).

Päivi L., et al., (2005) *A Diamond Curse? Civil War and a Lootable Resource*, *Journal of Conflict Resolution*, 49: 4, 538-562.

Pegg, S., (2003), *Poverty Reduction or Poverty Exacerbation? World Bank Group Support for Extractive Industries in Africa*, *Environmental Defense*, 1-48.

Roba, G., *Will Angola escape the Resource Curse?* Paper on file with the Author, August 2006.

Ross, M., (2003), *Natural Resource and Civil War: An Overview*, *World Bank Research Observer Save the Children* (2003), *Lifting the Resource Curse*, 7.

The Economist, (2006) *A Glimmer of Light at Last*, June 24th -27th, 71-73.

Transparency International Annual Report, 2005, p. 10.

UNDP Angola, <http://mirror.undp.org/angola/Privatepercent20Sector.htm> (last visited on 21/08/06)

Wantchekon, L., (2004), *Resource Wealth and Political Regimes in Africa*, *Comparative Political Studies*, 37: 7.

World Bank http://www.worldbank.org/data/countryclass/classgroups.htm#Low_income (last visited on 07/07/06) World Vision, <http://www.sponsor.org> (last visited on 21/08/06).

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The African Prospect is a journal published by the International Institute for Justice and Development Inc. (IIJD) that is designed to foster increased discussion of the underlying causes of poverty in Africa and enhance the debate of possible solutions. To that end, in addition to scholarly work completed by academics and professionals, we encourage the contribution of graduate work. We solicit papers that draw on both original research and first hand experience. A high level of diversity in contributions, we believe, is vital to the search for fresh and innovative solutions to the underlying causes of poverty in Africa.

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