

**CONFLICT RESOLUTION IN POST-CONFLICT DRC, RWANDA AND SIERRA
LEONE: TOWARDS A SYNERGY OF THE RIGHTS-BASED AND INTEREST-
BASED APPROACHES TO CONFLICT RESOLUTION**

Mini-dissertation submitted in partial compliance of the degree LLM

(Multi-disciplinary Human Rights)

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DECLARATION

I declare that this dissertation is my original work and that it has not been submitted for the award of a degree at any other University or institution.

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DEDICATION

To the Lord Almighty who made it possible, and my family who have undertaken the journey beyond.

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ABSTRACT

This mini-dissertation relates to the post-conflict period in the DRC, Rwanda and Sierra Leone, juxtaposing the rights-based and interest-based approaches to conflict management and resolution.

The study is premised on the lack of significant collaboration between the two approaches, notwithstanding the already existing collaboration. The rights-based approach posits that there exist some crimes of international dimension that should not be left unprosecuted for whatever reason. The approach sees the compliance with international norms on the respect of human rights as more important than coming to a final resolution of conflict. This paradigm therefore postulates that transgressors of international norms cannot take part in peace agreements and must be held individually responsible for the atrocities they have committed. The approach considers justice as a prerequisite to peace.

The interest-based approach frowns at the idea of laying blame on persons as being responsible for committing horrendous breaches and rather seeks to be neutral and not blaming any party. The approach encourages more dialogue and cooperation between the two parties which could culminate in a settled agreement. The approach gives more room to inclusiveness, participation and conflict resolution. Peace here is accepted to be a *conditio sine qua non* to justice and the resolution of conflict thereafter. As a result of this juxtaposition of approaches, proponents of the two approaches have been perpetually suspicious of each other's approach. This impasse has therefore retarded collaboration in the two paradigms to a sufficient degree.

This study therefore argues for a third stand, which is the synergy of the approaches to collaborate to a degree which will enhance sustainability in peace agreements to guarantee durable and long lasting peace in the DRC, Rwanda and Sierra Leone. This third stand depicts that integrating the approaches, insights and knowledge from one approach strengthen and benefit the other. Conflict resolvers will understand how rights denial have the potential of igniting conflict, and human rights actors will enhance their negotiation skills in conflict resolution especially in areas where the access to rebel occupied zones and even to political prisoners is difficult.

Finally, the study has also depicted how traditional African methods and concepts like *Gacaca* and *Ubuntu* can be enhanced within the broad usage of the two paradigms and not as competitive paradigms. *Gacaca* is a traditional mechanism in Rwanda whose primordial aim is the settlement and reconciliation of the victim with his perpetrators. *Ubuntu* seeks to reiterate the connectivity existing between Africans. Conflicts will not exist if we all love one another due to our connectivity. 'We' is given more consideration than 'I'. This is the understanding from the perspective of *Ubuntu*.

TABLE OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ADFL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
AFRC	Armed Forces Revolutionary Council
AHRLR	African Human Rights Law Reports
APRM	African Peer Review Mechanism
AU	African Union
CAT	Convention Against Torture and other cruel, inhuman or degrading treatment or punishment
CDR	Coalition for the Defense of the Republic
CERD	Convention on the Elimination of all Racial Discrimination
CEWARN	Conflict Early Warning and Response Network
CRC	Committee on the Rights of the Child
DRC	Democratic Republic of Congo
ECOMOG	Economic Community of West Africa Cease-fire Monitoring Group
ECOWAS	Economic Community of West African States
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Commission for the Red Cross
ICTR	International Criminal Tribunal for Rwanda
IGAD	Intergovernmental Authority on Development
LRA	Lord's Resistance Army
MLC	<i>Movement de Liberation Congolais</i>

MRND	National Revolution Movement for Development
NPFL	National Patriotic Front of Liberation
OAU	Organisation of African Unity
OPDS	Organ on Politics, Defense and Security
PARMEHUTU	<i>Parti du Movement de L'Emmancipation Hutu</i>
PSC	Peace and Security Council
RCD	Congolese Rally for Democracy
RCD	<i>Rassemblement Congolais pour la Democratie</i>
RPF	Rwandan Patriotic Front
RUF	Revolutionary United Front
SADC	Southern African Development Community
SCSL	Special Court for Sierra Leone
TRC	Truth and Reconciliation Commission (South Africa)
UN	United Nations
UNAMIR	United Nations Assistance Mission in Rwanda
UNAMSIL	United Nations Assistance Mission in Sierra Leone
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund (formerly United Nations International Children's Emergency Fund)
UNOMIR	United Nations Observation Mission in Rwanda
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNOMUR	United Nations Observance Mission Uganda and Rwanda

CHAPTER ONE: INTRODUCTION

1 Background

In the recent past, the activities of the rights-based and interest-based approaches to conflict resolution have often been looked at from a perspective of contradiction and competition between these two approaches, rather than how they could come together to complement each other and henceforth enhance peace from the perspective of justice¹.

It is to be acknowledged that the principle of the promotion and protection of rights as a means to curtail conflict was already enshrined in the 1948 Universal Declaration of Human Rights in the following terms: ‘It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected as a rule of law’².

The two fields have not been able to integrate their perspectives because of the manner in which they have traditionally functioned. The rights-based and interest-based approaches see conflict from two different perspectives. The human rights field, on the one hand, emphasizes the strict application of normative-oriented objective standards, which are set forth to determine who is right and who is wrong and thereby hold those responsible for violating human rights treaties accountable before courts of law. This is known as the “rights-based” approach. The conflict resolution field, on the other hand, is concerned with the reconciliation of needs, building new relationships, and working towards compromises between conflicting parties. This approach is here referred to as the “interest-based” approach. As a result of the conflicting interests, some tension is always bound to arise, since each field wants to show the supremacy of its approach³.

¹ M Parlevliet ‘Bridging the divide. Exploring the relationship between human rights and conflict management’ (2002) 11 *Track Two* 10-11

² Preamble, the Universal Declaration of Human Rights, United Nations General Assembly resolution 217A (iii), 1948

³ K Arnold ‘Exploring the relationship between Human rights and Conflict Resolution’ *Forum National Institute for Dispute Resolution* (1998) 1-5, P Baker ‘Conflict Resolution versus Democratic Governance: Divergent paths to peace?’ in C Crocker & F Hampson (eds) *Managing global chaos: Source of and responses to international conflict* (1996) 563-571

In the recent past, instead of applying the words ‘either, or,’ as was the case in the classical literature on human rights and conflict resolution, it is more common to hear the usage ‘both, and’ which suggests that more and more, proponents of the two fields have started thinking seriously about the necessity of their integration to better achieve peace and justice⁴. In most societies where conflict had been experienced or in which conflict is still an issue, like the Democratic Republic of Congo (DRC), Rwanda and Sierra Leone, the protection and promotion of rights must be established to prevent or eliminate the possibility of a renewed conflict⁵. As a matter of fact, a successful conflict resolution deal is no longer determined from the perspective of less or no bloodshed, but in terms of the moral or ethical quality of its outcome⁶.

Furthermore, the rate of failure of peace agreements in previous violent conflicts, as a result of the exclusion of the perpetrators of human rights violations in the agreements for reasons of illegitimacy, now calls for a more practical or integrated approach where both ‘violators’ and ‘victims’ will be present in the peace agreement. This is so, logically, because in the instance of intra-state or civil wars, no party could be absolved from all human rights abuses since they were both parties to the violence. In such a situation, therefore, no party would have been able to participate legitimately in peace negotiations⁷.

Elaborating on the way the two fields look at conflict differently does not seek to establish the fact that they cannot be conflated, but rather aims at illustrating their need to work together because they are both pursuing the same goal. This is made more elaborate through the manner in which peace agreements are drawn up, with elements of both perspectives enshrined in the form of power-sharing agreements and facilities to encourage accountability⁸.

⁴ P Baker n 3 above 566

⁵ L Nathan ‘The four horsemen of the apocalypse: The structural causes of conflicts in Africa’ (2000) 25 *Peace and Change* 188-207 at 191

⁶ P Baker n 3 above 566

⁷ n 5 above

⁸ J Kunder ‘How can Human rights be better integrated into peace process?’ (1998) Conference Report Washington DC: Fund for Peace.

As a result, the rights-based and interest-based approaches need to be applied in tandem and not in competition, since the two approaches are intertwined in one another, by the simple fact that rights violations lead to conflict, and in the course of violent conflicts, rights are violated⁹.

A thorough scrutiny of the link between the fields of human rights and conflict resolution in the DRC, Rwanda and Sierra Leone, also depicts a connection between the interest-based and rights-based approaches. On the one hand, as a result of the violent conflicts, the three countries submitted themselves to the jurisdiction of the International Criminal Court (ICC)¹⁰, the International Criminal Tribunal for Rwanda (ICTR)¹¹ and the Special Court for Sierra Leone (SCSL)¹², as a primary example of the role of the rights-based approach. The Lusaka/Pretoria agreement, Arusha Accords¹³ and Lomé/Abuja Agreement¹⁴, on the other hand, are examples of the interest-based approach.

Various civil wars have taken place on the continent of Africa in the last two decades, including the protracted civil war in Sierra Leone, the genocide in Rwanda and the armed conflict in the DRC. The last conflict by 2001 had left 110,000 refugees in Tanzania, more than two million Congolese internally displaced, a million dead and close to 400,000 refugees in neighbouring countries¹⁵. The genocide in Rwanda left over 800,000 people dead in less than four months, and the Revolutionary United Front (RUF) of Foday Sankoh in Sierra Leone, used the technique of mutilation and amputation of body parts to subdue opponents¹⁶.

The refusal by parties in these conflicts to grant access to areas under their control for the purpose of humanitarian assistance shows the degree of entrenchment of the culture of abuse

⁹ n 1 above 14-16

¹⁰ The Lubanga trial ICC <http://www.lubangatrial.org/> (accessed 12/12/2010)

¹¹ International Criminal Tribunal for Rwanda <http://www.unictt.org/>

¹² SCSL [http://www.sc-sl.org/cases/prosecutorvCharles Taylor/tabid/107/default.aspx](http://www.sc-sl.org/cases/prosecutorvCharles%20Taylor/tabid/107/default.aspx) (accessed 15/12/2010)

¹³ R Joshi 'Genocide in Rwanda: the root causes' (1996) 3 *East African Journal of Peace and Human Rights* 51-91 at 69-71

¹⁴ M O'Flaherty 'Sierra Leone's peace process: The role of the human rights community' (2004) 26 *Human Rights Quarterly* 29-62 at 32-37

¹⁵ J Celliers & M Malan *Peacekeeping in the DRC* (2001) 74

¹⁶ n 1 above 14-15

in most African states in a state of violence. Therefore, the need for the collaboration of the two fields, by means of interaction in the skills of the main actors to address these issues, is imperative¹⁷.

2 Problem statement

Firstly, this mini-dissertation will examine the reason for the dearth of co-operation between the rights-based and interest-based approaches. The study will determine the reason for this through a wide range of factors, including but not limited to the classical models adopted by the two fields, which reduced them to tension because of their different perspectives in solving the same problem.

Secondly, this study argues that although there is already the application of the paradigm proposed in most conflicts in Africa, the present co-operation between the rights-based and interest-based approaches is not enough or sustainable and long-lasting peace will only be enhanced, when this co-operation is fully engaged and exploited¹⁸. Therefore, this study proposes that more interaction and dialogue is needed between the rights-based and interest-based approaches, because insights and practices from one field can help boost activities in the other field¹⁹.

Moreover, competition between the two fields also defines the limited extent of their co-operation, and also the outstanding problem in this study, because the non-provision of human rights in most interest-based approaches leaves the process flawed with the danger of returning to hostilities in the future²⁰. Over-emphasis on prosecution for the perpetration of egregious crimes, of some of the main avenues of forwarding the rights-based approach will mar reconciliation and increase the guarantee of future return to violence. Therefore, a more engaged cooperativeness between the rights-based and interest-based approaches will give room for exploitation of complementary skills to bring 'peace with justice' to end civil wars in the DRC, Rwanda and Sierra Leone²¹.

¹⁷ G Lamb 'Putting belligerents in context: The cases of Namibia and Angola' in S Chesterman (ed) *Civilians in war* (2000) 25-43

¹⁸ n 1 above 7

¹⁹ n 1 above 7

²⁰ Human Rights Watch 'The lost agenda. Human rights and UN field Operations' (1993) 1-35

²¹ n 5 above

There is a need to transform the debate between ‘peace versus justice’, into one of ‘peace and justice’. The reason for this debate emanating from the fact that, while human rights accentuate the compliance with strict standards such as international treaties and local laws to determine the rightness or wrongness of a person, conflict management seeks the reconciliation of needs and interests of the parties in dispute constructively. Therefore, their synergy may bring considerable peace and justice in Africa²², bearing in mind that impunity breeds violence and prosecutions are needed to redress these developments²³, yet the future reintegration of these perpetrators of grave atrocities, means a return to that same community and hence require reconciliation and forgiveness as well²⁴.

This study will also use other contemporary resolution techniques which support further the rights-based and interest-based approaches from related disciplines such as traditional method, *gacaca*, anthropology (*ubuntu*) and transitional justice (truth and reconciliation commissions) to analyse conflict resolution in the DRC, Rwanda and Sierra Leone.

1.3 Definition of key concepts

What is conflict? Conflict refers to incompatibility between the interests or needs of an individual or groups pursuing the same goal. It may be either manifest (direct), recognisable through actions or behaviours, or latent (structural), where there is inactiveness for a moment, as incompatibilities are built into systems or institutional organisations such as government, corporations, and the reason behind the injustices orchestrated (cultural). However, this paper limits itself to violent or direct conflict²⁵. According to Galtung, conflict can better be made comprehensible by using a triangle, with contradiction (C), attitude (A), behaviour (B). Violence as well, could be viewed likewise, as: direct (D), structural (S), cultural (C)²⁶.

What is conflict resolution? This is the process of attempting to resolve a dispute or a conflict. Successful conflict resolution occurs by listening to and providing opportunities to

²² P Baker n 3 above 566

²³ F-X Bangamwabo ‘International criminal justice and the protection of human rights in Africa’ in A Bosl & J Diescho, (eds) *Human rights in Africa* (2009) 105-127

²⁴ M Parlevliet ‘Between facilitator and advocate: the South African Truth and Reconciliation Commission’ (1998) 36 *Forum National Institute for Dispute Resolution* 6-15 at 7-8

²⁵ O Ramsbotham et al *Contemporary conflict resolution* (2005) 8-12

²⁶ n 25 above 10-11

meet each party's needs and adequately addressing their interests so that they are each satisfied with the outcome²⁷.

Rights-based approach: This approach aims at justice as a precondition to peace²⁸ determining responsibility, to lay blame based on the transgression of human rights norms. Accountability then becomes paramount, in the event of violation of these instruments, on the part of government in case of failure to report to the committee responsible for violating these instruments²⁹. In a nutshell, the rights-based approach accentuates restoration of the rule of law and redress for violations³⁰. The strategies of the rights-based approach are adversarial; parties responsible for grave breaches are sidelined from peace processes³¹.

The focus here is mostly on, but not limited to individuals and has the effects of 'win-lose' the rights-based approach entrenches values which impose the need to speak out against injustice and denouncing parties responsible for atrocities. The sources of the rights-based approach are normative in particular, the law: criminal law, international treaties and domestic constitutions³².

Interest-based approach: This approach aims at fostering peace as a precondition for justice, that is, justice through peace. In addressing the root causes of conflict and reconciling the different interests of the parties, through the cessation of violence and resolution of conflicts, so that relationships between parties can be repaired. The interest-based approach is more co-operative, and aims to include all relevant parties in the peace process. The approach is flexible as negotiation is allowed and negotiated outcomes must be acceptable to local actors and conducive to local conditions. Judgment and criticism of parties is not allowed, especially in public³³.

²⁷ Center for Conflict Resolution Training workshop on human rights and conflict management for African human rights defenders (21-23/9/2009) Birchwood hotel Johannesburg, South Africa (conflict prevention, management and resolution approaches to human rights) 3

²⁸ P Baker n 3 above 567

²⁹ H Steiner & P Alston *International human rights in context* (1996) 505-506

³⁰ General comment no. 7 as replaced by general comment no.20 (HRI/GEN/1/Rev.8) 168

³¹ P Baker n 3 above 567

³² n 1 above 12

³³ n 1 above 12

This approach tends to focus more on society, community, groups of people and have a more pragmatic focus. The need to be neutral with the parties concerned and the effects of the interest-based approach is a ‘win-win’ the interest-based approach can be found in political theories³⁴ and peace theories³⁵.

1.4 Research problem and research questions

The overall research question this mini-dissertation seeks to answer is: To what extent can the protection and promotion of human rights be ensured sustainably through the integration of the interest-based and rights-based approaches to conflict resolution in the DRC, Rwanda and Sierra Leone?

The following sub-questions will be answered alongside, to give more clarity:

- i) How and why have the rights-based and interest-based approaches traditionally or classically been operated separately?
- ii) How could the integration of the two fields or approaches to conflict resolution in the DRC, Rwanda, and Sierra Leone promote peace, justice and development in these countries?
- iii) What will be the outcome if a single approach is used in isolation of the other?

5 Significance of research

This paper will evaluate and expose why the tension existing between both fields makes it difficult to integrate the two fields and why they seek to remain separate.

The differences in both fields give added reason why the relationship between the two fields should be explored and look for avenues where co-operation between them could probably help enhance their common ambition.

This study is limited to violent conflicts in the DRC, Rwanda and Sierra Leone, but gives an overview of violent conflicts on the continent to depict the trend of conflicts on the African continent presently, and to articulate the ills in adopting only one approach to resolve these conflicts. This therefore conceives a test of the two approaches so that peace and justice may see the light of day in these countries.

³⁴ n 1 above 18-19

³⁵ J Galtung *Peace by peaceful means* (1996) 31-33

6 Literature review

This research question had previously been answered by Michelle Parlevliet. She employed a three 'waves' approach, whereby, in the first wave, she posits the primacy of conflict resolution, in the second wave, she recognises the necessity for the synergy of the two approaches, and thirdly the evaluation of the synergy³⁶. In my own approach, I will consider the efficacy of each approach separately, owing to the situation at hand, and the subsequent amalgamation of the two approaches and the evaluation of their application.

Amongst the three violent conflicts under scrutiny, that of the DRC is the fiercest with six other African countries taking part, the greatest number of peacekeeping forces ever in the history of the United Nations (UN) and one of the greatest death tolls. Prof. Mangu Andre Mbata B. has expounded on this extensively and progressively with regard to the sources or causes and settlement of the conflict³⁷.

In classical conflict resolution literature, the human rights field used the rights-based approach, prescription, exclusion of perpetrators from agreements, denouncing and shaming perpetrators³⁸, while the conflict resolution field is concerned with the reconciliation of interests and relationship of parties to the conflict³⁹. Human rights mechanisms to prevent conflict in Africa include amongst others the domestic legislation and international principles laid down to be observed, in international conventions⁴⁰, while the conflict management field uses local mechanisms such as Early Warning System⁴¹, peacemaking, peace building and peacekeeping⁴².

³⁶ M Parlevliet 'Rethinking conflict transformation from a human rights perspective' (2009) 23-25 www.berghof-handbook.net (accessed 28/12/2010)

³⁷ AMB Mangu 'Armed conflict, law and challenges to the new transitional order in the DRC' (2004) 10 *East African Journal of Peace and Human Rights* 100-138

³⁸ n 3 above 567

³⁹ n 1 above 12

⁴⁰ F Viljoen *International human rights law in Africa* (2007) 529-567

⁴¹ W Dorn 'Early and late warning by the UN Secretary General of threats to peace: Article 99 revisited' in A Shnabel & D Carment (eds), *Conflict prevention from rhetoric to reality* (2004) 305-344 at 305-307

⁴² n 25 above 134, 135, 217, 218 and 219

The synergy of the two approaches is going to yield great dividends and promote peace, justice and development in Africa because of the fact that most contemporary peace agreements have enshrined in them, mechanisms to arrest conflict escalation, promote human rights, and the ultimate resolution of conflict⁴³. This usually takes the form of power sharing, truth commissions, and the erection of courts to account for individual responsibility⁴⁴.

Pragmatically speaking, the nature of internal wars in Africa calls for the application of both perspectives (rights and interest-based approaches). If the legal perspective of non-inclusion of those liable for human rights abuses in peace negotiations was to be respected in the strict sense, then there will be no negotiated settlements in civil wars. This is solely because by the very nature of a civil war, no party qualifies to be exonerated from culpability. As a result, no party will qualify as a legitimate party in negotiations, yet it will be an impossibility to resolve the civil war without their participation⁴⁵.

Again it will be good to acknowledge the fact that no matter how successful the legal protection of human rights may prove to be in addressing conflict, the legal framework does not go without its own limitations, therefore human rights protection should be meditated from a variety of perspectives⁴⁶.

It should be understood that the need for conflict resolution practitioners to have knowledge of human rights will not only be relevant in situations where conflict is as a result of human rights violation, but equally in instances where serious human rights violations lead to violent conflict. In such situations, therefore, those to intervene should be conversant with the various tools or instruments to be applied to address the conflict constructively. The international nongovernmental organization known as Human Rights Watch, undertaking a study on five different (United Nations) UN field operations known as ‘the lost agenda’,

⁴³ Global facilitation network for security sector reform ‘Pursuing sustainable peace through Post-Conflict Peace building: the case of Sierra Leone’ http://www.ssrnetwork.net/document_library/detail/3657/pursuing-sustainable-peace-through-peacebuilding (accessed 14/10/2010)

⁴⁴ Alert Net Court in Kenya to scrutinize electoral violence <http://www.alertnet.org/thenews/newsdesk/LDE6820U1.htm> (accessed 12/11/2010)

⁴⁵ n 5 above

⁴⁶ n 1 above 11

noticed that most of their peacekeeping efforts had enshrined human rights just to an insignificant extend to the detriment of the various operations⁴⁷.

Further, apart from the synergised approach proposed above, other methods are employed in resolving conflict in Africa such as the *gacaca* traditional mechanism in Rwanda, where the primordial aim is the settlement and reconciliation of the victim with his perpetrators, and subsequent establishment of the truth and punishment of the perpetrator⁴⁸.

Ubuntu which is an African philosophy with its epistemology from the Nguni proverb *umuntu, nyumuntu, ngabantu* simply put, 'I am because we are'. The philosophy seeks to reiterate the connectivity existing between us Africans. If we therefore engage this act and the love one should have for each other in the community, then no conflicts will occur, or forgiveness follows thereafter, due to our connectivity⁴⁹. This is the understanding from the perspective of *ubuntu* which lies at the heart of conflict resolution.

7 Research methodology

The methodology adopted in this study will be analytical, comparative, and descriptive. The comparative approach will be used because from time to time, I will have to elucidate on certain issues which require the integration of the two approaches. In such instance, I will compare the two approaches in order to show how if only one was used, the process will be flawed with injustice. The descriptive approach will be employed because I will evoke the overview of conflict resolution in the DRC, Rwanda and Sierra Leone. To what extend its integration with human rights approach has dissipated the evolution of conflict. The analytical approach will go a long way to intimate the impact and the success of an integrated approach to conflict resolution in these countries for sustainable peace and justice.

Moreover, focused library research and desk top literature is undertaken. This takes the form of assessing internet information and employing that which is necessary and relevant legislation as well as, where applicable, the consultation of text books articles and so on.

⁴⁷ n 20 above

⁴⁸ B Ingelaere 'The Gacaca Courts in Rwanda' in L Huyse & M Salter (eds) *Traditional justice and reconciliation after violent conflict* (2008) 33

⁴⁹ Y Mokgoro 'Ubuntu and the Law in South Africa' available at <http://epf.ecoport.org/appendix3.html> (accessed 28/11/ 2010)

As a result of lack of resources and time constraint, it will be unfortunately impossible for me to do field work and even meet personally professionals in the discipline, to get their own opinions.

7.1 Primary sources of information:

a) The analysis of the various domestic legislation of the countries in which violent conflicts occurred: The DRC, Rwanda and Sierra Leone.

b) Furthermore, international conventions will be consulted, which cover issues on conflicts and human rights, the transformation of conflict and analysis of peace agreements in the DRC, Rwanda and Sierra Leone.

7.2 Secondary sources of information include:

a) Text books on conflict transformation and human rights, conflict resolution, and international law

b) Information from relevant websites, journals articles on conflict resolution and human rights in Africa.

c) Reports from training workshops and seminars on human rights and conflict resolution in Africa, information from Centre for Conflict Resolution of the University of Cape Town, South Africa.

8 Proposed structure (overview of chapters)

Chapter One: This chapter will cover the introduction which is the background to this mini-dissertation, research problem and questions, research methodology, significance of research and chapters overview.

Chapter Two: This chapter determines the law pertaining to violent internal conflict, and the determination of the category of crimes committed. I will then give an overview or background to the violent conflicts in the DRC, Rwanda and Sierra Leone.

Chapter Three: This chapter poses the question: What is the rights-based approach, and how does it prevent violent conflict? How is violent conflict resolved in the post conflict DRC, Rwanda and Sierra Leone? What are the benefits of this paradigm? What are the limitations of this rights-based paradigm?

Chapter Four: In this chapter, the following questions are addressed: How does the interest-based approach deal with prevention of conflict, and how does it finally resolve conflicts when they have escalated to violence in the DRC, Rwanda and Sierra Leone? What are the benefits and limitation of this paradigm?

Chapter Five: This chapter introduces the integration of the rights-based and interest-based approaches and the benefits of this approach which will maximise long lasting peace and justice in these countries and the conclusion.

9 Scope and delineation of study

This research shall limit itself to intra-state or internal conflict (non-international wars, civil wars). However, the study might for the sake of illustration, occasionally delve into other conflicts other than those under scrutiny. The geographical and temporal delineation is as follows: DRC, (1998-2004) which will cover the era of Congo's 'Second war', leading to Laurent Kabila's Presidency, up to the rule of his son, Joseph Kabila. Rwanda (1993-1996), focus here will be accentuated on crimes committed on the Rwandan territory from 1 January 1994 up to 31 December 1994, including the various peace initiatives. However, events falling out of this ambit but leading to the run-up of the final apocalypse would be delved into as well. Sierra Leone (1994-2002) will cover the rule of President Momoh up to the Presidency of Kabbah Tejan, his subsequent exile into Guinea, and his final re-election in 2004 when the war was declared ended.

10 Conclusion to the introduction

It is clear that conflicts have a multi-disciplinary dimension and can certainly not be addressed from a parochial perspective. To enhance justice, peace and reconciliation in the DRC, Rwanda, Sierra Leone in particular and the continent in general, calls for dialogue and an integrated approach in the field of human rights and conflict management. Nonetheless, the very extensive nature of conflict calls for support from further disciplines such as anthropology, transitional justice and sociology, since there is no one-size-fits-all approach to resolve conflict.

CHAPTER TWO: THE LAW ON INTERNAL CONFLICT AND BACKGROUND HISTORY TO THE VIOLENT CONFLICTS IN THE DRC, RWANDA AND SIERRA LEONE

2.1 Introduction

In the last two decades, the African continent has suffered enormously from calamities of violent conflicts, which most often lead to the violation of normative rules or treaty practice, by the various countries involved. The majority of those who bear the brunt of violence in these conflicts and whose rights are systematically violated are civilians. The fiercest of the violent conflicts observed within the last two decades of the twenty first century are the DRC, Rwanda and Sierra Leone, which will be my centre of focus in this chapter.

This chapter will delve into the historical background of the causes of the violent conflicts in the specified countries, the interests of the warring parties at stake and the human rights violated, while articulating on the nature of these conflicts with respect to the Geneva Conventions governing armed conflicts.

More so, there is a need to ascertain the nexus between international humanitarian laws, human rights law and international criminal law. It is worth noting that international humanitarian law is the law which regulates armed conflicts and the conduct of warfare to minimise the violation of international human rights. After the armed conflict, those guilty of violating these international humanitarian laws are dealt with under the aegis of international criminal law.

2.2 The law on internal conflict

Before 1949, states had refused to draft any rules governing non-international conflicts, believing that insurrection and rebellion were solely within the domestic affairs of the state and had the exclusive obligation to prosecute, denying rebels to be belligerents⁵⁰. Post 1949 has seen the progressive collapse of 'recognition of belligerency' into oblivion, because the law has been progressive to take on board non-international armed conflicts, fought mostly against insurgents⁵¹.

⁵⁰ R Kolb & R Hyde *An introduction to the international law of armed conflicts* (2008) 65-71 at 65

⁵¹ n 50 above 66

The four Geneva Conventions of 1949 did not anticipate non-international conflicts⁵². The 1977 additional protocols to the 1949 Conventions subsequently made a distinction between international and non-international armed conflicts. Protocol 1 is on international armed conflicts and Protocol 2 on non-international armed conflicts⁵³. Article 3 common to the Geneva Conventions also applies to non-international conflicts⁵⁴. This application to non-international conflict is made possible by virtue of the Vienna Convention on the law of treaties 1969 and the doctrine of legislative jurisdiction⁵⁵. This doctrine posits that by the parent state's acknowledgment of the Convention, the rebels are bound. The terms of article 3 bind insurgents though they are not a state because according to the Vienna Convention on the Law of Treaties, 1969, it is clear in its articles 34-36, that treaties can impose rights and duties on third parties, if it was the intention of the party to the treaty to do so, this means insurgents also bear responsibility but via the state, which is a party to the treaty⁵⁶.

Finally, amongst the three violent conflicts of focus in this mini-dissertation, that in the DRC is of an internationalized non-international nature, and those of Rwanda and Sierra Leone are purely of an internal nature. Actually, the distinction between international and non-international wars has been blurred in contemporary law of armed conflicts. The outcome of the nuclear stalemate reveals that most international conflicts now take the guise of internal conflict, conducted disguisedly at a low level of intensity⁵⁷.

This convergence in the two bodies of internal and international conflict was highlighted in the famous *Tadic case*, which poses as the landmark case in this domain⁵⁸. The creation of international ad hoc tribunals and the International Criminal Court (ICC) has been very

⁵² n 50 above 65

⁵³ L Moir *The law of internal armed conflict* (2002) 89-90

⁵⁴ n 53 above 31

⁵⁵ n 53 above 52-53

⁵⁶ n 53 above 52-53

⁵⁷ G Stewart 'Towards a single definition of armed conflict in international humanitarian law': A critique of internationalised armed conflict' http://www.icrc.org/eng/assets/files/other/irrc_850_stewart.pdf (accessed 18/11/2010)

⁵⁸ n 53 above 136-138

instrumental to the prosecution of war crimes in internal armed conflicts in contravention with the Geneva Conventions⁵⁹.

2.3 The historical description to the violent conflicts in the DRC, Rwanda and Sierra Leone

2.3.1 The Democratic Republic of Congo (DRC) (1998-2004)

2.3.1.1 Pre-Kabila era

The violent conflict which took place in the DRC from 1998 to 2002 has been a protracted one since the reign of President Mobutu in the former Zaire. President Mobutu suppressed and denied the identity of some Banyarwande or Banyamulenges in the DRC, originating from Rwanda, about some 200 years ago⁶⁰. However, research shows that the real structural causes which laid a foundation for the violence in the DRC were the result of state collapse, due to the effects of colonialism⁶¹. The collapse of the state further served as a leeway for external forces to use this forum as a windfall opportunity to influence events in the DRC to suit their own personal interests⁶². This is why attention should focus more on the understanding of the causes which weakened the state, and seek for a means of solving this problem in the post violent state⁶³.

Some other remote causes like the cold war and the failure to democratize the transition from Mobutu's Zaire to the DRC also abound⁶⁴. The system of divide and rule which characterized the colonial rule entrenched President Mobutu's rule, radiating exclusion, discrimination and autocracy; this created an impasse in the survival of the state⁶⁵.

⁵⁹ n 53 above 149, 160, 161, 177 and 178

⁶⁰ n 1 above 14

⁶¹ C Kabemba 'Whither the DRC?: Causes of conflict in the Democratic Republic of Congo' <http://www.cps.org.za/drc.htm> (accessed on 20/11/2010)

⁶² n 61 above

⁶³ n 61 above

⁶⁴ n 61 above

⁶⁵ n 61 above

The triggers or immediate causes to the violence in the DRC ranged from socio-economic-political and external factors which included Uganda, Rwanda, and Burundi⁶⁶. The role of mineral resources in the violence according to Samset Ingrid is not the cause per se, but rather a cause to have protracted the violence⁶⁷.

The Congolese refer to the war against Laurent-Desire Kabila, by those who projected him to the helm of power (Uganda and Rwanda) in the DRC as the ‘second war’⁶⁸.

2.3.1.2 The Kabila era

The Alliance of Democratic Forces for the Liberation of Congo-Zaire (ADFL) of Kabila overthrew Mobutu Sese Seko in May 1997 and proclaimed Kabila as the new president, with a call from the international community to put an end to anarchy and institute the rule of law and democracy⁶⁹. It is important to note that Kabila’s success to claim power was thanks to the assistance from the alliance of Rwanda, Uganda and Burundi, with a condition to look into the problem of the nationality problem of the Banyamulenge⁷⁰.

The refusal of President Kabila to execute the agreement when he took over power saw the genesis of the violence; with Burundi and Rwanda supporting rebel groups in the names of *Rassemblement Congolais pour la Democratie* (RCD) and *Movement de Liberation Congolais* (MLC) to fight Kabila’s government⁷¹. The various countries rebutted the DRC’S cry for violating her territorial integrity by adducing the defense that rebel groups are using DRC ground like a safe haven to launch attacks on them, especially the ‘Interahamwe’ a remnant of the defeated Hutu faction of Rwanda, who swore to make the victorious Tutsi to govern without people⁷².

⁶⁶ P Orugun ‘Crises of government, Ethnic schisms, civil war, and regional destabilization of the Democratic Republic of Congo’ (2002) 165 *World Affairs* 25-41 at 25-27

⁶⁷ I Samset ‘Conflict of interests or interests in conflict? Diamonds and war in the DRC’ (2002) 29 *93/94 Review of African Political Economy* 463-480 at 465-467

⁶⁸ Minority Rights Group International Report ‘Erasing the Board’ (2004) 6

⁶⁹ n 66 above 25

⁷⁰ n 66 above 32

⁷¹ n 66 above 30

⁷² n 66 above 32

With this state of affairs, Kabila insisted before the AU and UN to have a right to his method of defense as a sovereign state in order to redeem his territory from violability. This saw the coming in of Angola, Zimbabwe, Chad and Namibia to fight on the DRC's side against Uganda, Rwanda and Burundi⁷³

2.3.1.3 Post-Kabila era

In 2002 a peace treaty was signed in Pretoria South Africa, this peace treaty led to subsequent talks which resulted in an agreement with Rwanda and the government of national unity with Jean Pierre Bemba becoming Prime Minister⁷⁴.

Since the war began in 1998, more than 5,000,000 people have lost their lives generally, and some dying due to war related diseases and 1000 in the Eastern Provinces of Kivu. The exploitation of mineral wealth by the armed groups has acted as fuel to keep the conflict persistent⁷⁵.

The interests of the various warring parties in the Congo war are as follows: Uganda, Burundi and Rwanda demanded the resolution of the identity problem of the Banyamulenges in the DRC, who were continuously being suppressed by former President Mobutu, as not being Congolese citizens⁷⁶. It has even been posited by some writers that the two state men of Rwanda and Uganda seek to form a Tutsi dynasty in the great lake region⁷⁷. That is to say, Museveni and Kagame wanted to exercise hegemony in the Great Lakes region with the assistance of America. To be successful in this goal, they needed to take control of power in the DRC⁷⁸. The three countries wanted to collapse the government of Kabila because they financed and supported his defeat over Mobutu, so as to stop insurrections from the 'Interahamwe' and other militia movement operating from Congo to destabilize their

⁷³ n 66 above 31

⁷⁴ H Solomon 'Towards regional security integration in southern Africa: prospects and challenges' in A Bujra & H Solomon (eds) *Perspectives on the OUA/AU and conflict management in Africa* (2004) 221-222

⁷⁵ n 61 above

⁷⁶ n 1 above 14

⁷⁷ Congon line 'Conflicts in the DRC' <http://www.congonline.com/forum1/forum00/sloj01.htm> (accessed 20/11/2010)

⁷⁸ AMB Mangu 'Armed conflict, law and challenges to the new transitional order in the DRC' (2004) 10 *East African Journal of Peace and Human Rights* 100-138 at 110-111

governments. Kabila instead acted against them, by endorsing the insurgent actions and even financing them against the three countries in question⁷⁹.

Another interest of the warring parties against the DRC was the exploitation of minerals so as to sell and use the money to fund the war⁸⁰.

The most significant human rights violated in this armed conflict include: mass killing of civilians not participating in hostilities, systemic rape of women and young girls, in fact, crimes against humanity in general and war crimes⁸¹ and other grave breaches including torture, unlawful killing, and enlistment and conscription of child soldiers⁸².

2.3.2 Rwanda (1993-1996)

2.3.2.1 Colonial era

*History in Rwanda has always been malleable, growing out of the story lines of one's own choosing. If one was Hutu, then heroes were Hutu. If one was Tutsi, the opposite was true. In that story-telling, that exaggeration and embellishment came the seeds of conflict*⁸³.

The above statement somehow suggests the emergence of the genocide in Rwanda. These are the effects of latent conflicts. The suppression of the rights of individuals only drives them to express their grievances through violence⁸⁴. The same anti racist tendencies of the German elimination of Jews in the holocaust could define Rwandan reasons for genocide, rooted in age-old beliefs implanted by brutal colonialists⁸⁵.

⁷⁹ n 66 above 30

⁸⁰ S Sundstol 'Congo war and the prospects for state formation: Rwanda and Uganda compared' (2005) 26 *Third World Quarterly* 1097-1113 at 1101

⁸¹ n 68 above 12, 15

⁸² Amnesty International 'No end to war on women and children: North Kivu Democratic Republic of Congo' <http://www.amnesty.ca/amnestynews/upload/AFR620052008.pdf> (accessed 21/11/2010)

⁸³ N Jones *The courts of genocide* (2010) 17

⁸⁴ n 1 above 14

⁸⁵ D Bloxham 'The organisation of genocide: perpetration in comparative perspective' in G Olaf & C-C Szejnmann (eds) *Ordinary people as mass murderers* (2008) 185-199 at 186-187

Apparently, three main propositions exist for the eruption of genocide in Rwanda, These are: external influences which are both colonial and neo colonial; domestic causes which include both demographic factors and ethnic conflict, and thirdly, a psychological account based on the presumed social conformism and obedience of Rwandans⁸⁶.

Christian churches were not a direct factor that caused the conflict but their full participation in the killings cannot be underestimated. They were not only in support of the violence as a way of influencing state to share state power, but were themselves a recognized arena where some of the massacres took place⁸⁷. Often, Churches did not get involved in the violence simply because they wanted to avoid opposing the government which was their strong ally, but rather because ethnic conflict itself amounted to a significant part of Christianity in Rwanda⁸⁸.

Folklore posits that Tutsi cattle rearers entered the region from the horn of Africa in the 15th century and gradually suppressed the Hutu inhabitants. The Tutsi went as far as establishing a monarchy right up to the colonial times headed by a *Mwami* (king) and superiority in the feudal system of Tutsi nobles and gentry⁸⁹.

Amongst the three groups of inhabitants in Rwanda, the Twa's are said to be the original inhabitants of the jungle that is today divided between the eastern republic of DRC, western Uganda, Rwanda and Burundi⁹⁰. Though the Germans had no resistance from the *Mwami*, Belgian troops from Zaire soon chased them out ruthlessly and exerted control over the country.

As first colonizers of Rwanda, the Germans contributed to the fascination of an anthropological type which segregated everything they came across, according to its physical characteristics. "These Germans thus proffered the paradigm that Tutsi, with their high foreheads, thin long noses, tall slim builds and 'refined' habits were not a negroid race, but

⁸⁶ H Hintjens 'Explaining the 1994 Genocide in Rwanda' (1999) 37 *Journal of Modern African Studies* 241-286 at 243

⁸⁷ T Longman 'Church politics and the genocide in Rwanda' (2001) 21 *Journal of Religion in Africa* 163-186 at 167

⁸⁸ n 87 above 164

⁸⁹ Background note: Rwanda <http://www.state.gov/r/pa/ei/bgn/2861.htm> (accessed 21/11/2010)

⁹⁰ Rwanda in the aftermath of the genocide: Historical background
http://www.telphoto.com/Rwanda_History.htm (accessed 21/11/2010)

rather part of the ‘lost sons of Ham’ who migrated into central Africa from Ethiopia⁹¹. The Hutu, were clearly simple minded and happy, flat-nosed negroid with a large frontal lobe”. This paradigm is still believed to date by Rwandans.

The coming of the white fathers had laid a strong legacy of influence of churches in the politics of Rwanda, they ‘wisely adopted’ a ‘top down approach’ in which all at the top were converted and this later influenced those at the bottom to follow suit. This sent a strong signal to the populace that the church has a lot of power in the state and they had to live by its dictates if they wanted to evolve⁹².

The Belgian rule was very ruthless based only on their self interest. They used existing social and political structures, twisting them as necessary to serve their ends. Since the Rwandans had ‘a refined hierarchy and inbred deference to authority’, the Belgians found this as an asset which eased their task⁹³.

In 1933 the Belgians created identity cards segregating the various groups that made up Rwanda. The definition of a Tutsi engulfed the ownership of more than 20 cows and that ethnically the Tutsi were superior. The Tutsi captains were given production quotas in terms of community work all had to do, with the system run on fear⁹⁴.

The interests at stake that brought about the violent conflict were as follows: the Hutus wanted total control of everything in Rwanda because they believed the Tutsis were not legitimate citizens of Rwanda, but have had more control and favor since the colonial period, and wanted to suppress and eliminate them for they were considered as ‘charlatans’ who colonized ‘our’ land⁹⁵.

Moreover, Tutsis’ interest in the genocide was also to coerce the Government to repatriate into Rwanda, thousands of Tutsis who were in exile since the purges of the late 1950 and

⁹¹ n 90 above

⁹² n 90 above

⁹³ n 90 above

⁹⁴ n 90 above

⁹⁵ H Liam ‘Genocide in Rwanda: Fundamental question’

<http://www.scribd.com/doc/2925253/Genocide-in-Rwanda> (accessed 25/11/2010)

early 1960 which saw close to 20,000 Tutsis massacred, to return to their homeland and be given equal treatment⁹⁶.

2.3.2.2 Post-colonial era

The monarchy of the Tutsi clan was overthrown by the Hutu based Party of 1959, *Parti du Mouvement de L'Emmancipation Hutu* (PARMEHUTU) which won in a landslide victory in a UN supervised referendum. A PARMEHUTU government was formed and Belgian trusteeship terminated⁹⁷.

Kayibinda became the President and his government propagated Hutu supremacist ideology. In 1973 general Habyarimana took over power, dissolved the National Assembly and the PARMEHUTU, and every other political activity⁹⁸. Elections were conducted in 1978 under National Revolution Movement for Development (MRND) aegis confirming Habyarimana as President. This later on led to the endorsement of a new constitution. He was again elected in 1983 and 1988.

The Coalition for the Defense of the Republic (CDR) formed by the most extremist elements of the Hutu elite created the 'Interahamwe' 'those who kill together' a civilian militia, expressing extreme racist ideas and fuelled fear for everyone⁹⁹. They had created a news paper on the reflection of their thoughts called *Kangura* and disseminated information of hate on air saying "the grave is only half full. Who will help us fill it?"¹⁰⁰.

The various human rights which occurred in the violent conflict were generally crimes against humanity, rape, torture and genocides. Rounds of massacres were experienced in Bugesera.

Habyarimana went to Arusha in 1994 for yet a second round of peace talks. He was coerced by the international community to comply with Arusha Accords, upon his return to Kigali his plane was attacked and short down at close range, killing everyone inside including

⁹⁶ n 95 above

⁹⁷ n 89 above

⁹⁸ n 89 above

⁹⁹ n 90 above

¹⁰⁰ n 90 above

Habyarimana¹⁰¹ This is the final spark that led to unrestrained violence which saw about 800,000 people killed just in a hundred days with seventy five percent of the dead being Tutsi and ten Belgian peacekeepers killed as well¹⁰².

2.3.3 Sierra Leone (1994-2002)

2.3.3.1 The Siaka Stevens era

Explanations advanced to deduce why a peace-loving country like Sierra Leone became consumed by a brutal and horrible war found traces reflected in the new order of corruption and embezzlement of state funds and bad governance generally which consumed deeply into the roots of the state and left the entire state torn apart¹⁰³.

Generally, like in most African states of the post-independence period, which customized colonial structures to pursue their own governance, state collapse has always been the outcome. The DRC is a good example¹⁰⁴. The rule of Mobutu was characterized by corruption, nepotism¹⁰⁵ and the coming of Kabila did not make things any better, with the same ills consuming the entire Congolese society, leaving the citizens wallowing in mire¹⁰⁶.

The then President, Siaka Stevens, who ruled between 1968-1985 had turned the country's fledgling democracy into a one party state, dismissing the rule of law, and employing autocracy as a ruling alternative, corrupting the entire civil service together with the army¹⁰⁷. After Siaka Stevens had bankrupted the treasury to build a gigantic hotel which was to host the Organization of the African Unity (OAU), he groomed and handed over power to his chosen successor General Joseph Momoh, when the economy of the country was virtually on its knees¹⁰⁸.

2.3.3.2 The post-Siaka Stevens era

¹⁰¹ n 13 above 71

¹⁰² n 90 above

¹⁰³ Report of the Sierra Leone Truth and Reconciliation Commission vol 3A. 3

¹⁰⁴ n 61 above

¹⁰⁵ n 15 above 20

¹⁰⁶ n 78 above 103

¹⁰⁷ J Hirsch 'War in Sierra Leone' (2001) 43 *Survival* 145-162 at 147

¹⁰⁸ n 107 above 147

The main reason why the RUF became the protagonist of the war is twofold; firstly, because the educational system collapsed as a result of the economic crises which left schoolteachers unpaid, the literacy rate of the country stood at a meager rate of 20 percent¹⁰⁹.

Even though Momoh had been ousted by Valentine Strasser and Julius Maada in 1992, it still did not make any positive impact and the economic collapse and war continued¹¹⁰.

Secondly, contrary to common belief that the RUF would have waged war against the Government in an attempt to control alluvial resources, it has been posited that Sankoh had been imprisoned in the 1970s by Siaka Stevens for a failed *coup* attempt and therefore Sankoh was very keen to direct his revenge towards the chosen successor of Siaka, Momoh and his ministers¹¹¹. However, one cannot gainsay the fact that the quest for the mineral resources was the main cause of the continuation or persistence of the war¹¹².

In 1992 President Momoh was chased into exile to Guinea by Colonel Yaya Kanu as a result of his inability to suppress the incursions from the rebels and salaries payment¹¹³. 1996 saw Kabbah Tejan as the new constitutional leader after elections. In 1997, the Armed Forces Revolutionary Council (AFRC) through a *coup*, sent Kabbah into exile to Guinea and was later brought in only by the Nigerian peacekeeping forces in 1999¹¹⁴. An attempted *coup* against Kabbah again failed in 1999 and by 2004 Kabbah had been re-elected as the war was declared ended and 2004 saw the disarmament process¹¹⁵.

The interest at stake in this war included the following: The brutal war going on in Liberia also played a part in the war in Sierra Leone, as Charles Taylor, the leader of the National Patriotic Front of Liberia (NPFL), helped RUF¹¹⁶. This was because he wanted to deal with the Nigerian dominated peacekeeping forces in Freetown, who were a great opposition to his

¹⁰⁹ The Civil War in Sierra Leone http://www.afrol.com/news/sil007_civil_war.htm (accessed 26/11/2010)

¹¹⁰ n 107 above 147

¹¹¹ n 107 above 150

¹¹² n 107 above 150

¹¹³ n 109 above

¹¹⁴ n 107 above 151

¹¹⁵ Country programme: Sierra Leone <http://www.unddr.org/countryprogrammes.php?c=60> (accessed 26/11/2010)

¹¹⁶ n 115 above

rebel movement in Liberia. Taking control of the war became an easy task for the RUF as the Government's resistance against RUF was a clumsy one mainly because of the crumbled government. RUF gained areas in the eastern part of the country, controlling most cash crops and diamonds mines of Kono district¹¹⁷.

Another interest in the war launched by the RUF was to topple the corrupt government which was in place, avert the economic situation and reinstitute, or rebuild the academic or low literacy rate which had entrenched the country due to state bankruptcy. Lastly, it was the aim of RUF to control the diamond mines of the Kono district, so as to change the plight of the masses that were deprived of their rights¹¹⁸.

The various kinds of human rights violated ranged from: child soldiers, grave breaches including torture, war crimes, and generally crimes against humanity, rape and body part amputation and mutilation, causing unnecessary suffering to humans¹¹⁹.

2.4 Conclusion to chapter two

From the literature review above on violent conflicts in the DRC, Rwanda and Sierra Leone, the one thing which is comparable is untold violence, and central to the cause of all the violent conflicts is state collapse, but also the struggle for natural resources, bad governance and identity crises. Most of these issues conceived their roots from colonialism. Most of the post-colonial African governments, the DRC, Rwanda and Sierra Leone inclusive, maintained the structures of the colonialists which were mostly based on wanton exploitation, oppression, suppression and lack of humanity. The inhabitants of the DRC, Rwanda and Sierra Leone, now in a bid to depict their disgruntleness for wallowing in despondency in the hands of their own voted and endorsed governments, who think only about themselves and forget about the plight of the masses, retaliate by means of bloody and violent conflicts.

¹¹⁷ n 109 above

¹¹⁸ n 109 above

¹¹⁹ Human Rights Watch Sierra Leone 'Getting away with murder, mutilation, rape' (HRW: A1103/6)

CHAPTER THREE: THE RIGHTS-BASED APPROACH TO CONFLICT PREVENTION AND RESOLUTION IN THE DRC, RWANDA AND SIERRA LEONE

3.1 Introduction

This chapter begins by asking the question: How did the rights-based approach prevent conflicts in the DRC, Rwanda and Sierra Leone; how are violent conflicts resolved after escalation? This chapter also sets forth the limitation and benefits of the rights-based approach in resolving conflicts generally. The chapter will consider the prevention and resolution of conflicts at the national, regional and international level with regard to the DRC, Rwanda and Sierra Leone.

3.2 The rights-based approach to prevention of conflict in the DRC, Rwanda and Sierra Leone

3.2.1 Domestic legislation and accountability for violations

The Congolese criminal law punishes many violations of human rights. Art 67 of the Criminal Code of this country for example stipulates in clear terms that arbitrary arrest is a crime punishable by between one and five years¹²⁰. Moreover, if the arrest is accompanied with torture and ill treatment, the punishment will be extended to twenty years and a death penalty maybe administered in a situation where injuries inflicted in detention result to death¹²¹. In a nutshell, apart from the Constitution of the DRC of 2006¹²², setting out these rights, focus has been geared towards a very specific piece of legislation, by way of incriminating anyone, violating those rights. This is part of a rights-based approach to prevent violent conflicts in the DRC.

In Rwanda several laws have been enunciated in their Criminal Code so as to incriminate anyone trying to incite conflict through his action or speech¹²³. Article 166 of Rwandan penal

¹²⁰ Human Rights Watch 'We will crush you' applicable legal standards international human rights law <http://www.hrw.org/en/node/76188/section/8> (accessed 22/12/2010)

¹²¹ n 120 above

¹²² n 120 above

¹²³ F Viljoen 'Hate speech in Rwanda as a test case for international human rights law' (2005) 38 *Comparative and International Law Journal of Southern Africa* 1-14 at 4

Code criminalizes any speech or talk made in open places with the ultimate intention of bringing polarization between citizens¹²⁴.

Art 393 of the Rwandan Penal Code accentuates the punishment of imprisonment and of a fine of up to 5000 francs or both for anyone provoking aversion for hatred towards one group of persons or racial group¹²⁵. The law of the Press 54/91 of 15 November 1991 also makes it an offence in an event where defamation or public slander is ensued¹²⁶. This is a precaution taken to prevent conflict through the rights-based approach.

In Sierra Leone, apart from human rights being guaranteed in the Constitution, there is no specific legislation on the Criminal Code which denounces the violation of rights but the Arms and Ammunition (Amendment) Act, 1974 which provides for more serious penalties for the unlawful possession of arms, which might violate the right to life¹²⁷. This is a means of curtailing the violation of rights through the rights-based approach.

Finally, it should be understood that the use of domestic law is a significant way of addressing rights violation because the criminal code lays down the basis of the crime and its punishment. This is more protective than constitutions which simply give directives and its provisions do not fundamentally affect behavior.

3.2.2 Government responsibility to international treaty bodies

The governments which are state parties to treaties have an obligation or responsibility to report on the state of these rights to the various bodies in charge periodically for redress if any¹²⁸. This is enunciated in the African Charter on Human and Peoples' Rights (ACHPR) in article 62¹²⁹ and under the UN treaty bodies, for example article 40 of the International

¹²⁴ n 123 above 4

¹²⁵ n 123 above 4

¹²⁶ n 123 above 4

¹²⁷ The Arms and Ammunition (Amendment) Act, 1974 Sierra Leone <http://www.sierra-leone.org/laws/1974-17.pdf>

¹²⁸ Center for Human Rights University of Pretoria State Reporting Project: Understanding state report <http://www.chr.up.ac.za/index.php/understanding-state-reporting.html> (accessed 22/12/2010)

¹²⁹ A Turay 'Awareness times in Sierra Leone, Human Rights Commission on ACHPR workshop' http://news.sl/drwebsite/publish/share/article_200515625.shtml. (accessed 22/12/2010)

Covenant on Civil and Political Rights (ICCPR)¹³⁰. This will involve discussions between member states and the international monitoring body¹³¹. That is to say the treaty body will be proffering to the state parties the duties required of them in order to meet up with the treaty's requirements.

3.2.3 African human rights body (regional): The African Commission on Human and Peoples' Rights (ACHPR)

Under the ACHPR, the main mechanisms for the prevention of conflict are states reports and individual complaints or communications. These will be discussed below with respect to the DRC, Rwanda and Sierra Leone.

3.2.3.1 State party reporting

State reporting is a measure adopted by the rights-based approach to oversee the implementation of human rights in member countries. This is done through the various periodical reports presented before the ACHPR on the evolution or challenges faced in the efforts to protect and promote human rights by state parties. This is the duty of the state parties exclusively, and no individuals.

The DRC ratified the ACHPR in 1987¹³². By the nature of international treaties, they have to be domesticated or implemented through incorporation into the legislation in dualist states. That is, states of the common law tradition like Sierra Leone, before they are made national law, except they are 'self executing'¹³³ and in 'monist' states like those of the civil law tradition, like the DRC and Rwanda, as at the time the genocide occurred immediately become national law once ratified¹³⁴.

¹³⁰ United Nations CCPR Human Rights Committee

http://www.bayefsky.com/reports/drcongo_ccpr_c_cod_2005_3.pdf (accessed 22/12/2010)

¹³¹ n 29 above 505

¹³² Democratic Republic of Congo Ministry of Human Rights Eighth, Ninth and Tenth Periodic Reports to the African Commission on Human and Peoples' Rights
http://www.achpr.org/english/state_reports/DRC/DRC_state%20report.pdf (accessed 22/12/2010)

¹³³ n 40 above 534

¹³⁴ n 40 above 531 & 534

DRC's ratification of this ACHPR places a responsibility on the State to report to the treaty body on the state of human rights periodically¹³⁵. State party reporting is a rights-based mechanism aimed at preventing conflict which will result in the violation of human rights in that, when the state party observes its obligation to submit the reports respecting the guidelines provided, the Commission will act promptly and curtail or arrest the impending violation of rights¹³⁶. However, the analysis of the state reports and cases of violation below will simply depict the fact that to an extent, this mechanism is fraught with numerous shortcomings. The DRC has since the inception of this mechanism within the ACHPR, submitted two reports, the first in 2002 was considered in November 2003 as an integrated report of all reports running from 1989 and the second whose deliberation is still pending, in 2007¹³⁷.

An in-depth assessment of the DRC draws one to the conclusion that this mechanism could at best be very misleading as the DRC carefully outlines only issues of the law and its successes to that effect. That is to say the DRC merely outlines areas where it has protected and promoted human rights. The DRC however, completely undermines the difficulties it faces and challenges. This is very misleading and might not help as a device for prevention of conflict as a result¹³⁸.

Rwanda ratified the ACHPR on 17 May 1983 and since then became a state party to the treaty with all its obligations¹³⁹. Rwanda has submitted five reports to date: In 1996, 2000, 2004, 2007 and 2009. What is common amongst all the state reports of Rwanda is that it acknowledges the constraints faced in the implementation of the Charter as a result of

¹³⁵ n 29 above 505

¹³⁶ n 128 above

¹³⁷ African Commission on Human and Peoples' Rights' Status of submission of states periodic reports/concluding observation http://www.achpr.org/english/_info/statereport_considered_en.html (accessed 23/12/2010)

¹³⁸ n 128 above

¹³⁹ African

Union

http://www.chr.up.ac.za/images/files/documents/ahrdd/rwanda_concluding_observations_recommendations_2002_2004.pdf (accessed 23/12/2010)

illiteracy, ignorance and cultural diversity, which makes the task cumbersome. They also propose how they intend to avail these challenges and forge ahead¹⁴⁰.

The Commission in their concluding observations with respect to the state report of 2004 pointed out that the state reports did not throw light on whether programmes had been conceived to train the judicial personnel with regard to the future transfer to the ICTR of persons suspected of genocidal perpetrations¹⁴¹.

Sierra Leone also became a state party to the ACHPR in 1983¹⁴². However, up to date, Sierra Leone has never submitted any report before the ACHPR¹⁴³. Notwithstanding their failure to report before the ACHPR, on the state of human rights, repeated submission of communications and stated cases in shadow reports however confirm continuous violations.

All these three countries have obligations as state parties to the treaty to submit periodic reports on the state of human rights in the various countries, making them overseers of these rights in their respective countries¹⁴⁴.

3.2.3.2 Communications

The individual complaints organ has competence to hear matters from individuals claiming to be victims of violation by the state party to a convention¹⁴⁵. However, it also has competence on individual group communications and inter-state party communication. Eleven different communications have been submitted to the ACHPR against the DRC, making it the country the most complained against individually, under this mechanism. Three of the communications were dismissed by the Commission, either for non-exhaustion of domestic remedy, lack of substantial merits or lack of interest on the part of author to pursue the

¹⁴⁰ n 137 above http://www.achpr.org/english/_info/statereport_considered_en.html (accessed 23/12/2010)

¹⁴¹ African Union African Commission on Human and Peoples' Rights concluding observation and recommendation on the eight periodic report of the Republic of Rwanda (2002-2004)

¹⁴² African Union List of countries which have signed, ratified/ acceded to the African Union Charter on Human and Peoples' rights http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf (accessed 23/12/2010)

¹⁴³ n 137 above

¹⁴⁴ General Comment no. 1 as replaced by no. 30 n 30 above 163

¹⁴⁵ n 29 above 535

communication. Five other communications were admitted by the Commission for violation of the ACHPR, however, only the three which fall within the ambit of this mini-dissertation will be discussed below. In the case of *Marcel Wetsh'Okonda Koso and Others v Democratic Republic of Congo*, the appellants accused the DRC for violating article 55 of ACHPR by virtue of the fact that the respondents were arrested as a result of a business deal with ELF (a petroleum company) and brought before the Military Court made up of five judges untrained except for one trained jurist. The outcome was that the respondents were sentenced to capital punishment without a possibility for any review¹⁴⁶.

The cases of violation of human rights, give a contradictory outcome to the reports submitted by the DRC. In the *Institute for Human Rights and Development (on behalf of Mboyo) v DRC*, though the assailed subsequently withdrew the case, there was torture after having being brutalized, intimidated and detained for twenty three days without a warrant. The fact that the state party to the ACHPR still tortures, simply depicts the short coming of this mechanism because the state would not succumb to reporting on the realities of issues which will be tantamount to non compliance with its obligation to respect rights under the treaty as state party to it¹⁴⁷.

There has been an inter-state complaint lodged to the African Commission by the DRC against Rwanda for grave and egregious human rights violations caused on its territory by the coalition of Rwandan and Uganda armies. In the *DRC v Burundi, Rwanda and Uganda* case, amongst others involved rape by the coalition army, infesting its citizens with HIV/AIDS, assassinating Congolese army and disregarding the rule of *non refulement* during violent conflict. The respondent states were found guilty, violating articles 12(1), 14, 16 17, 18(1), (3), 19, 20, 21, 22 and 23 of the African Charter and demanded that reparation be paid by the respondent states¹⁴⁸. This depicts continuous violation, despite the various state parties' obligation to the treaty. This subjects the plausibility of this mechanism to question.

¹⁴⁶ African Commission on Human and Peoples' Rights

http://www.achpr.org/english/_info/index_deccision_DRC.html (accessed 8/01/2011)

¹⁴⁷ n 137 above African Human Rights case law database DRC

<http://www.chr.up.ac.za/index.php/browse-by-country/drc> (accessed 10/01/2011)

¹⁴⁸ n 137 above <http://www.chr.up.ac.za/index.php/browse-by-country/rwanda> (accessed 15/01/2011)

Four communications have been lodged against Rwanda by the same organisation in four different years: 1989, 1990, 1991, and 1993, known as *Organisation Mondiale contre la Torture and Association Internationale des Juristes Democrates, Commission International des Juristes (C.I.J) Union Inter africain des Droit de L'homme*. Communication 27/89 exposes the expulsion of two nationals of Burundi and refugees from Rwanda in 1989¹⁴⁹. Communication 46/90 reaffirms that summary executions and illegal arrests took place in Rwanda¹⁵⁰. Communication 49/90 is to the effect that detentions had been made covering thousands of person's mostly on ethnic origins and held under deplorable conditions, most of them being Tutsis¹⁵¹. Communication 99/93 covered issues on systematic massacres, arbitrary executions and unlawful arrests against the Tutsi ethnic groups¹⁵².

Sierra Leone: A communication was also lodged against this State as seen in the case of *Forum of Conscience v Sierra Leone*. The African Commission found the government of Sierra Leone in contravention of articles 4 and 7(1) (a) of the ACHPR because soldiers were tried and condemned in a court martial giving them no room for appeal. It was reiterated that, the fact that the governing rule of the court martial did not create room for appeal was an infringement of the ACHPR.

Finally, the communication system is another vital way of preventing conflict because a state may not include such violations in its report, but through individual complaints, the issue will be addressed by the Committee in charge.

3.2.4 The UN treaty-based bodies

The UN treaty body also prevents conflict through state reporting and individual complaints. Under this body, the various instruments are applicable for conflict prevention: International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture (CAT), Convention on the Elimination of all Racial Discrimination (CERD), Optional Protocol on Armed Conflicts of the Convention on the Rights of the Child (CRC)

¹⁴⁹ http://www.achpr.org/english/decision_communication/Rwanda/comm.%2027-89.pdf (accessed 15/01/2011)

¹⁵⁰ n 149 above

¹⁵¹ n 149 above

¹⁵² n 149 above

3.2.4.1 State party reporting

The DRC ratified the ICCPR in 1976¹⁵³ and acceded to the CAT in 1996¹⁵⁴. Before the ICCPR, the DRC has submitted three reports but the putative intention of the mechanism still does not leave its mark as the DRC continues with the same story of painting a very positive image before the committee, of its commitment to its obligation without pointing out to its challenges, which is misleading¹⁵⁵. This is seen in the fact that communications have been lodged against the DRC.

The perpetual violation of human rights by the Government of the DRC could attest for her late submission of reports, or even if submitted in time, it is irregular in the content. In the concluding observation of the Committee on CAT (DRC) of 2005, the Committee pointed out the good factors of the DRC but also pointed the fact that the effect of conflict in the country has exacerbated the violation of rights but reasserted the dictates of article 2 (2) of this Convention on the peremptory norm on non torture for whatever justification¹⁵⁶.

In the concluding observations of the CERD up to 2003, the committee on CERD outlined both positive and negative aspects. With respect to positive aspects, the Committee hailed its efforts of transformation towards democracy in a decision by the head of state in 1990, to discard the one party system and to introduce a referendum on the new constitution and general elections to take place in 2007¹⁵⁷.

As concerns the negative points, the Committee raised the issue of discrimination against the pygmies of the various ethnic origins and also against the Banyamulenge ethnic groups on grounds of identity together with Rwandans and Burundians refugees. The Committee concerned about the fact that no information with regard to measures pursued towards the execution of the state party's obligation under article 6 of the Convention in situations where

¹⁵³ n 120 above

¹⁵⁴ United Nations General Assembly <http://www.un.org/documents/ga/docs/53plenary/a53-253.htm> (accessed 15/01/2011)

¹⁵⁵ n 128 above

¹⁵⁶ Concluding observations CAT- DRC- November 2005
http://www.bayefsky.com/docs.php/area/concllobs/treaty/cat/opt/o/state/48/node/3/filename/drcongo_t4_cat_35 (accessed 13/01/2011)

¹⁵⁷ http://www.bayefsky.com/docs.php/area/conclubs/treaty/cerd/opt/0/state/48/node/3/filename/drcongo_t4_cerd (accessed 13/01/2011)

communications have been introduced against acts of discrimination on the basis of race and compensation was rewarded to victims of such acts¹⁵⁸.

The DRC has also has an obligation under the Convention of the Rights of the Child (CRC) Optional Protocol to regulate the conscription of children into the army. With regard to this, the committee on the CRC is concerned with the killing of these children involved in hostilities by armies of state parties which constitute a violation of the children's rights and this goes with impunity. The committee was not only happy about the fact that efforts are made through the office of demobilization and reintegration of these children (DUNABER) but with the effectiveness of this office. The committee therefore demanded the prosecution of persons guilty of killing these children¹⁵⁹.

Rwanda acceded to the ICCPR in 1975¹⁶⁰ and submitted its first report in 1981, the second in 1987 and the third in 2007. The third will be of interest because it was submitted after the genocide occurred; therefore the possibility of having addressed such issues cannot be overemphasized. In its concluding observations, the HR committee observed the report did not mention the 1978 upheavals which were observed in the country and which thus inhibited the rights enjoyment as set in the ICCPR. The HR committee demanded the enforcement of habeas corpus and persuaded the state party to take committee's view into account and fourth periodic report should show prove of that¹⁶¹. Rwanda acceded to CAT in 2008¹⁶², ratified the Genocide Convention in 1975, under the terms of this convention, state parties undertake to prevent and punish the crime of genocide¹⁶³.

The Convention on the Elimination of all Racial Discrimination (CERD) was ratified in 1975 and just a year later its first report was tabled before the body in charge. The second was

¹⁵⁸ n 157 above

¹⁵⁹ Concluding observation CRC-DRC-2003

http://www.bayefsky.com/docs.php/area/concllobs/treaty/cat/opt/o/state/48/node/3/filename/drcongo_t4_crc (accessed 15/01/2011)

¹⁶⁰ n 140 above

¹⁶¹ Concluding observation ICCPR (2003) http://www.bayefsky.com/pdf/rwanda_t4_ccpr.pdf

¹⁶² United Nations Convention Against Torture
http://en.wikipedia.org/wiki/united_nations_convention_against_torture (accessed 15/01/2011)

¹⁶³ F Viljoen 'Inciting violence and propagating hate through the media: Rwanda and the limits of international criminal law' (2005) 26 *Obiter* (2005) 26-40 at 27

received in 1979 and during discussions, the issue of article 4(b) of the Convention, on its implementation was raised, while hailing the satisfaction so far of Rwanda in accordance with the state party reports, a call was made for continues dialogue¹⁶⁴. In the concluding observations of the CERD (2003), the Committee asserted that the rule of law has not been easy to establish because of the impunity of some perpetrators of the genocide which has eroded the respect for human rights.

The delay in the establishment of the power sharing government and non implementation of particular provisions had an adverse effect of probably hampering human rights enjoyment. This could be seen in the non execution of provisions 15 and 16 which demand the creation of a national commission of enquiry responsible for monitoring the violation of human rights and those committed during the genocide era¹⁶⁵.

Sierra Leone became a party to the ICCPR in 1996¹⁶⁶. Three reports have been tendered before the HR Committee in 1997, 2002 and 2007 respectively, but none has been examined yet¹⁶⁷.

The CERD committee concluded that the state party's attention should be craved with regard to its interest to comply with its reporting obligation as agreed under the convention and that there was urgency for the re-establishment of dialogue between the state party and Committee. The Committee further suggested that the state party should show prove of the technical assistance offered it by submitting a report in conformity with the reporting guidelines¹⁶⁸. So far, the state party has made number of reports to the Committee and four have been examined, and these are the concluding observations up till 2003¹⁶⁹.

¹⁶⁴ n 123 above 5

¹⁶⁵ Concluding observation (2003) CERD [http://www. Bayefsky.com/pdf/Rwanda_t4_cerd.pdf](http://www.Bayefsky.com/pdf/Rwanda_t4_cerd.pdf) (accessed 15/01/2011)

¹⁶⁶ Human Rights litigation in African countries http://www.deathpenaltyproject.org/content_pages/31 (accessed 15/01/2011)

¹⁶⁷ Sierra Leone reporting history http://www.bayefsky.com/pdf/sierraleone_t3_ccpr.pdf (accessed 15/01/2011)

¹⁶⁸ Concluding observations-CERD http://www.bayefsky.com/html/sierraleone_t4_CERD.php (accessed 16/01/2011)

¹⁶⁹ n 168 above

As concerns the CRC optional protocol on armed conflicts, the Committee required that the submitted report be made widely available through the internet, civil society organization and youth groups, urging the state party to incorporate into its legislation, the practice of the SCSL¹⁷⁰ on how former child soldiers should be treated as victims and not perpetrators. The Committee encouraged the state party to use the judgments of the SCSL as guidelines to children in this regard¹⁷¹. The committee also pleaded that steps be taken by the state party to apply all measures available to reintegrate the needs of the former child fighters and sexual violence by seeking assistance from UNICEF¹⁷². The CAT was ratified in 2001¹⁷³. And even after this ratification, there was continuous torture in this country as depicted by the communications, despite all the efforts of the Committees to avert the situation.

3.2.4.2 Communications

Under the UN Treaty body, communications have been received from the DRC and Sierra Leone. The communication mechanism helps to complement the state party reporting process, since most state parties avoid reporting on the rights they have infringed. This is established in the fact that the Human Rights Committee (HRC) received cases on the DRC of human rights violation, notwithstanding its silence to that effect. In the case of *Mulezi v Democratic Republic of Congo*, Mr. Mulezi was tortured by the army and his wife was killed, while he was placed under arbitrary detention¹⁷⁴. Through communication, this violation is made known to the HR Committee. Had they depended solely on state party reporting, then much information would be ignored.

As concerns Sierra Leone, The case of *Mansaraj and others v Sierra Leone*, the authors, members of the arm force of Sierra Leone were charged with treason and failure to suppress mutiny. They were convicted without any right of appeal, before the court martial. The HRC held that the state party had by virtue of article 2 of the Covenant to take care of its citizens and provide enforceable remedy in case of violation. The Committee made its wish to receive

¹⁷⁰ Concluding observation CRC Optional protocol (armed conflict)

http://www.bayefsky.com/docs.php/area/concllobs/treaty/crc/opt/1/state/154/node/3/filename/sierraleone_t4_crc_opac_55 (accessed 16/01/2011)

¹⁷¹ n 170 above

¹⁷² n 170 above

¹⁷³ Human Development Reports <http://hdrstats.undp.org/en/indicators/72.htm> (accessed 17/01/2011)

¹⁷⁴ n 120 above

from the state party in ninety days measures taken to enhance the Committee's opinion¹⁷⁵. From the above, it is made clear that under communications, individuals as well as groups of persons forming a single union and interstate complaints are welcomed. This complaint provision gives the UN treaty body some viability as a preventive measure, since it evokes human rights violations concealed by the state party.

From the brief analysis of the mechanism of conflict prevention in the rights-based approach, it is clear that the philosophy behind the conception of the mechanism makes it very viable to prevent conflict, if all the state parties to the treaty comply with their obligations to submit their reports on the progress and challenges of human rights in their respective countries. This compliance will give the committees in charge the possibility to act proactively, thereby averting the situation, if these violations were to cause any foul resulting to adverse effects. Moreover, the fact that most of the reports which have been scrutinized above do not fall within the scope of active hostilities according to the time or period frame I have advanced above. This non-submission of reports shows that during war or violence, there is little if any possibility for state reports to be submitted, or states hide under the canopy of anarchy during hostilities to evade reporting. This simulation pervades their course of action to avoid reporting to the treaty body, since they are in constant violation of their obligation. This then places a limitation to this mechanism to act as a preventive mechanism. I agree with Viljoen when he acknowledges the fact that depending solely on state reports as a successful evaluation mechanism of the UN is very questionable¹⁷⁶. All the same, the responsibility and duty the treaty body places on the state party, paves the way for compliance and radiates the viability of the mechanism.

3.3 Rights-based approach on the resolution of conflict in the DRC, Rwanda and Sierra Leone

With the rights-based approach, individual responsibility for the perpetration of egregious crimes is mostly enhanced. In this study, the various mechanisms which support this paradigm in the various countries respectively will be: the DRC, the ICC, Rwanda, the ICTR

¹⁷⁵ n 138 above <http://www.chr.up.ac.za/index.php/browse-by-country/sierra-leone> (accessed 17/01/2011)

¹⁷⁶ n 40 above 146

and Sierra Leone, the SCSL under the international criminal justice measure, and the *Gacaca* courts will be treated as a transitional justice measure. By using the individual responsibility mechanism, the rights-based approach seeks to depict its propensity to resolve conflict by dealing with the roots causes in that, it lays international rules in place as caveat to potential transgressors, warning that action will be taken if these rules are not complied with. This rights-based approach therefore locates the transgressor and imposes punishment on him in the form of retribution¹⁷⁷. This will render justice as the victim will feel relieved and his infringed right redressed, while the punishment on the perpetrator will send a message to potential violators. This establishes deterrence, thereby addressing the root causes of conflict.

3.3.1 Individual responsibility in the ICC for international crimes (DRC)

A number of warlords have been indicted by the ICC in the DRC on grave breaches, and Jean Pierre Bemba being one of them, But the first ICC proceeding and first trial in international law, where the victims had the right to participate in proceedings is Thomas Lubanga, a Congolese warlord, accused of war crimes namely: conscripting and enlisting child soldiers and then using them for hostilities between 2002 and 2003. The judgment is still pending¹⁷⁸.

A second trial has been opened against other Congolese militia commanders in the names of Germain Katanga and Mathieu Ngudjolo Chui. Mbarushimana Callixte was arrested on the 11 October 2010, and it has been confirmed that hearings will go operational on 4 July 2011¹⁷⁹. Up to the present, the Court is concerned about investigations into five different countries mostly from the African continent. Seventeen persons have so far been indicted by the court¹⁸⁰.

3.3.2 Individual responsibility in the International Criminal Tribunal for Rwanda (ICTR) for perpetrating genocides

¹⁷⁷ n 27 above

¹⁷⁸ n 10 above

¹⁷⁹ International Criminal Court-Democratic Republic of Congo <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200104> (accessed 17/01/2011)

¹⁸⁰ ICC-situations and cases <http://www.icc-cpi.int/menus/icc/situations+and+cases/> (accessed 17/01/2011)

Since the inception of the prosecution in the ICTR, fifty trials have been completed with twenty nine convicted accused persons for inciting genocidal attacks on individuals, thereby violating their human right to life¹⁸¹. Prominent amongst those prosecuted and judgments delivered are: C. Kalimanzira, L. Nshogoza, T. Renzaho and T. Muvunyi¹⁸². In a nutshell, the groundbreaking case in the ICTR trials was the *Akayesu* judgment. In this judgment, the Tribunal took the bold step to establish rape in the first time in history as a specific crime falling outside the confines of the definition of crimes against humanity. It was established that rape amounted to genocide when its ultimate intention was to ‘wholly or partially destroy a specific group of persons’¹⁸³. In a nutshell, completing only fifty trials within a period of more than ten years marks a short coming in the rights-based approach in the resolution of conflict. The procedure is very slow and prosecutions are very costly. However, the imposing of individual responsibility by the ICTR is a deterrent to potential human rights violators.

3.3.3 Individual responsibility before the SCSL

This Court was established by the UN Security Council resolution 1315 (2000) of 14 August 2000, resulting from an agreement between the government of Sierra Leone and the UN¹⁸⁴. The aim for the establishment of this court was to facilitate the prosecution of those who participated in the hostilities, guilty of gross violation of international human rights.

By the year 2003, thirteen indictments had been issued by the prosecutor. In that same year, two indictments were withdrawn in course of the proceedings, because some of the accused died. Amongst the trials completed are those of the three former commanders of the Armed Forces Revolutionary Council (AFRC), two from the Civil Defense Force (CDF) and three former commanders of the RUF, including appeals¹⁸⁵.

Charles Taylor is presently being prosecuted for war crimes, crimes against humanity and conscription of child soldiers at the SCSL in The Hague. Prosecutions opened on 4 June 2006

¹⁸¹ n 10 above

¹⁸² The legacy ‘The International Criminal Tribunal for Rwanda’ ERSPS 6, 7, 8

¹⁸³ H Jallow ‘How the International Criminal Tribunal for Rwanda is a crucial element in the re-establishment of a new situation of peace and security in Rwanda’ in O Ribbelink (ed) *Beyond the UN Charter: peace, security and the role of justice* (2008) 187-209 at 190

¹⁸⁴ <http://www.sc-sl.org/linkchick.aspx?fileticket=u> (accessed 25/01/2011)

¹⁸⁵ The Special Court for Sierra Leone <http://www.sc-sl.org/ABOUT/tabid/70/default.aspx> (accessed 25/01/2011)

and are still pending¹⁸⁶. Norman Hinga, indicted for enlisting and conscripting child soldiers and crimes against humanity. He died before his verdict was released¹⁸⁷.

Finally, the literature review above professes that the rights-based approach is not a very progressive approach in addressing the root causes of conflict. It does not address root causes expeditiously; since the creation of the ICC in the year 2000, it has not completed any trials on the DRC, since the inception of the SCSL in 2000, only eight trials have been completed and the ICTR has completed only fifty trials. For wars like those of the DRC and Sierra Leone fought for close to ten years each with egregious crimes registered and just a meager number of perpetrators convicted makes the approach unreliable. However, eradicating impunity by convicting these transgressors leaves potential violators with the possibility to rethink before embarking on such an activity. It should be noted that international law gives the authority to states to prosecute anyone guilty of violation of international crimes or to extradite them to the ICC¹⁸⁸. The DRC, Rwanda and Sierra Leone are parties to the Geneva Conventions and its protocols and the Rome Statute on the ICC¹⁸⁹. Therefore, setting responsibility on those in violation. Individuals of these countries in violation of these treaties should be held responsible as seen above.

3.3.4 Transitional justice (*Gacaca Courts*)

The organic law of the rights-based approach seeks to establish fault and subsequently reiterate accountability and individual responsibility for the transgression, and functions according to criminal logic trials¹⁹⁰. The *Gacaca Courts* follow this order in that individuals appear before lay judges and plead. What makes the Courts transitional is that these Courts do not only seek accountability but take a step further by implementing community service as the sole punishment and subsequently reconciling the perpetrator and the victim. This act

¹⁸⁶ n 12 above

¹⁸⁷ ‘who killed Sam Hinga Norman’ <http://www.worldpress.org/africa/2712.cfm> (accessed 25/01/2011)

¹⁸⁸ ‘Human Rights Watch Trial of death’ <http://www.hrw.org/en/node/89320/section/11> (accessed 25/01/2011)

¹⁸⁹ n 120 above

¹⁹⁰ n 48 above 55

ensures a convergence of both reconciliation and healing, thereby overcoming post conflict trauma and promotes development of the community¹⁹¹

Gacaca Courts are traditional courts in Rwanda, tasked with truth telling about the genocide; promote reconciliation amongst Rwandan's, to eradicate the culture of impunity, to speed trials of genocide suspects and to show Rwandans' own problem-solving capability¹⁹². The mandate of these courts is to emphasize the indispensability of confession or truth about what happened, forgiveness, and reconciliation of perpetrator and victim to encourage unity, and address impunity. This system has faced a lot of challenges but hopefully will serve as a starting point to reconstruction in Rwanda¹⁹³.

This mechanism of the rights-based approach has a great strength to address root causes of conflict, which cannot be underestimated. It has the conduct of restoring relationships through forgiveness. Therefore as a mechanism to resolve conflict, it is innovative in that the perpetrator does not only serve punishment for what he has done, but it seeks to avoid division amongst citizens of the same country since they are bound by their identity to live together. In this way, reconciliation and nation building through engagement and popular participation become effective, while transcending and discarding the impending possibility of ever inflicting such grave atrocity in the future¹⁹⁴.

3.4 Benefits of this paradigm

Through the mechanism of states reports, the treaty bodies are able to realize where impending violation of human rights could possibly occur, and take proactive measures to prevent its occurrence. For instance, as a result of submission of state reports, the HR Committee on human rights was able to warn the DRC on the continues involvement of children in the hostilities and their aftermath, which spurred up the issuance of decree no. 066 of June 2000 within the hostility period, to demobilize children in the army¹⁹⁵.

¹⁹¹ P Clark *The Gacaca Courts, post-genocide justice and reconciliation in Rwanda* (2010) 259

¹⁹² H Scanlon and N Motlafi 'Indigenous justice or political instrument?' *Peace versus justice?* (2009) 301-312 at 302

¹⁹³ n 48 above 38

¹⁹⁴ n 192 above 194

¹⁹⁵ n 159 above

The rights-based approach serves as a yardstick to understand the degree of necessity required, to avoid infringing those rights. This means that the rights-based approach enlightens the society and governments as well that rights of a peremptory norm can never be violated no matter the circumstances. Governments are not given the possibility to adduce the defense of the stubbornness of citizens, therefore necessitating inhumane treatment to restore order.

The rights-based approach has a significant deterrent effect potential to violation of human rights. The threat to prosecute and imprison top leaders of a rebel group may weaken the subordinate members to quit for the fear of their own fate or even the leaders themselves to come to a truce.

This approach will challenge impunity, by simply naming and shaming the perpetrators debars them from taking over any public office as a result of the past crimes they committed. For the sake of political ambitions, they would rather not get involved into such activities. It will activate rebel leaders to be responsible during the operation of hostilities for fear of individual responsibility since their states are state parties to the conventions concerned.

3.5 Limitations of this paradigm and conclusion

State parties never respect their obligation to prosecute those guilty of violation of human rights and most often, they are the greatest violators of these rights even though they have ratified the conventions¹⁹⁶.

This paradigm largely depends on state initiative to report, but state parties to the various treaties never fulfill their obligation of submitting their reports. Even when they do, they are very late and the content very scanty. So to rely solely on this method, then it is doubtful if respect of rights will be ensued¹⁹⁷.

Constitutions are said to be a preventive measure in the rights-based paradigm, yet, they do not stop anyone from violating the rights, and neither do they stop violent conflicts like those under scrutiny, from occurring.

¹⁹⁶ n 120 above

¹⁹⁷ n 40 above 104-106

It takes too long for judgments to be handed down. The various cases in the ICTR, SCSL and the ICC are glaring examples¹⁹⁸. This approach requires a lot of funds for prosecution and besides, it does not address root causes of conflict adequately.

Again, using this approach which is adversarial, that is, by trying to determine who is at fault and to levy blame on him, will make that party defensive and suspicious, and this might only add more fuel to the already burning fire. An example is the indictment of Joseph Kony, a war lord from the northern part of Uganda. As the leader of the Lord's Resistant Army (LRA), he has demanded that the ICC indictment be withdrawn as a *conditio sine qua non* for him to accede to the agreement table¹⁹⁹. This is because indicting him meant pointing a finger at him to have been the cause of the conflict.

3.6 Conclusion of chapter three

To sum up, considering the argument advanced above, it is clear no doubt that the rights-based approach stands as the best option to protect the violation of human rights because through its preventive and prescriptive mechanisms which are the state reports and treaties, it already places a responsibility on the party in violation to face charges and prosecution. However, for the fact that violations still occur notwithstanding these measures, depicts the flawed nature of the approach. The emergence of the flaw in this approach has been as a result of non compliance of state to their responsibility, and the lack of adequate sanctions for fear to violate state sovereignty. This position has thus instigated me to evoke a complementary approach to bridge this gap left by the flaws of the rights-based approach, and complement the sustainability of human rights in the countries under scrutiny and the enhancement of peace and justice, as will be illustrated below.

¹⁹⁸ n 10,11,12 above

¹⁹⁹ n 23 above 124

CHAPTER FOUR: THE INTEREST-BASED APPROACH TO CONFLICT RESOLUTION IN THE DRC, RWANDA AND SIERRA LEONE

4.1 Introduction

This chapter aims at scrutinizing the concept of conflict resolution as articulated in this mini-dissertation. This will be done by deciphering the nature of conflict prevention as understood in conflict resolution, while evoking the nature of conflict resolution. Conflict resolution emerges when preventive diplomacy has been inappropriately applied or the poor management of a conflict has now provided the leeway for escalation into violence, an example is the refusal of the Rwandan and Burundi Governments to allow its citizens in exile to return home²⁰⁰. In conflict resolution, conflict is viewed from a positive spectrum as a uniting factor rather than a cause for polarization. It is something which brings both parties together to cooperate and constructively transcend the contradiction which defines their differences and meet the needs of both parties rather than the need to defeat or win over the enemy²⁰¹. A summary of the benefits of this approach and its limitation will be considered. At this juncture, a brief reflection on the sustainability of human rights from conflict will be contemplated for the next chapter, following the integration of the two approaches.

4.2 The interest-based approach to prevention and resolution of conflict

4.2.1 The prevention of conflict

Prevention here should be understood to be both positive and negative. Positive where measures under early warning mechanisms like fact finding missions and monitoring are employed as a prediction to what might happen and prevent it from occurring, and negative where a violent conflict has been transformed, and structures and mechanisms are put in place to avoid the likelihood of conflict flaring up again, by instituting peacekeeping efforts, peace building, peacemaking and power sharing²⁰².

4.2.2 Regional and sub regional early warning mechanism for the DRC, Rwanda and Sierra Leone

²⁰⁰ B Kiplagat 'The African role in conflict management and resolution' in D Smoke & C Crocker (eds) *African conflict resolution* 27-37 at 29

²⁰¹ n 27 above Introduction to conflict, violence and peace building concepts

²⁰² n 201 above

The various mechanisms for prevention of conflict are discussed: early warning mechanisms, peacemaking, peacekeeping and peace building. From prevention I will then move to conflict resolution which will comprise of peace agreements and truth and reconciliation commissions or transitional justice mechanisms. I will then round up by bringing the benefits and limitations of the rights-based approach.

4.2.2.1 Early warning mechanism

Early warning can be defined as the act of informing or drawing the attention of a competent authority to a new or refurbished threat to peace, or ascertain a latent and low-level threat which has not yet captured attention within a reasonable early stage²⁰³. This is known as structural prevention²⁰⁴. Such warning therefore demands rapid reaction which will prevent conflict from erupting into violence and chaos. Since conflict prevention is very instrumental to the protection and promotion of human rights, the introduction of peace and security will be vital for the further protection of human rights²⁰⁵. An early warning was signaled to Mobutu with regard to the suppression of some Banyamulenge originating from Rwanda, and its impact, he gave a deaf ear, and this finally led to his overthrow and the creation of the present DRC²⁰⁶.

The genocide in Rwanda had manifested through some signs of crises like the various massacres which had been perpetrated in 1954, 1963, 1966, 1973, 1990, 1991, 1992 and 1993. An international fact-finding mission to Rwanda in 1993 declared the Habyarimana regime responsible for the human rights abuses and political assassinations²⁰⁷. Senegalese born lawyer Bacre Waly Ndiaye undertook a research mission of the United Nations Commission on Human Rights to Rwanda in 1993 and warned against potential threats of ethnic massacres in his report, but nothing was done. This silence contributed to the ordeal in 1994²⁰⁸.

²⁰³ H Jeong *Peace and conflict studies* (2000) 202-203

²⁰⁴ K Annan *Prevention of Armed Conflict* Report of the Secretary-General to the United Nations General Assembly and Security Council. Document A/55/985/-s/2001/574 2

²⁰⁵ n 200 above 31

²⁰⁶ n 66 above 27,29 30

²⁰⁷ n 13 above 71

²⁰⁸ n 13 above 71

The widespread nature of corruption, the one state party, the failure of the educational system and the rampant unemployment of rural young men was an early warning signal in Sierra Leone, because it created tension and unrest, which laid down the platform for future hostilities²⁰⁹. The OAU, and even the Secretary General of the UN, made a call for these various issues to be addressed, but the heads of states of the various countries simply ignored that²¹⁰.

The Organisation of African Unity (OAU) had by then introduced the Mechanism for Conflict Prevention, Management and Resolution through its Declaration²¹¹. On May 26 2001 the OAU was transformed into African Union (AU)²¹². The AU in its Constitutive Act has mentioned the need to promote peace and security and peaceful resolution of conflict amongst member states. The DRC, Rwanda and Sierra Leone are members of OAU/AU²¹³. Article 4(h) of the AU Constitutive Act gives it the power to interfere in the domestic affairs of a recognized country, guilty of grave violation, to restore peace and stability, whenever the Peace and Security Council made that call²¹⁴.

Finally, article 3(f), (h) of the AU Constitutive Act create duties and responsibilities to be responded to by the Peace and Security Council (PSC) and the African Peer Review Mechanism (APRM) consecutively through their various protective mandates, which cannot be overstated to say they are inextricably linked to one another²¹⁵.

At the sub regional level, the mechanisms for conflict prevention are: the Southern African Development Community (SADC) the Intergovernmental Authority on Development (IGAD)

²⁰⁹ n 107 above 147

²¹⁰ n 184 above

²¹¹ Declaration of the Assembly of Heads of States and Government on the Establishment with the OAU of the Mechanism, 29th Ordinary Session, Cairo Egypt, June 1993, reprinted in (1994) 6 *Journal of International Comparative Law* 158

²¹² The Constitutive Act of the African Union (adopted 11 July, 2000) reprinted in (2000) 12 *African Journal of International Comparative Law* 629

²¹³ AU Constitutive Act article 3(f) and 4(e), (h) 2000

²¹⁴ J Sarkin 'Humanitarian intervention and the responsibility to protect in Africa' in J Akokpari & D Shea (eds) (2008) *Africa's human rights architecture* 45-64 at 57

²¹⁵ AU Constitutive Act article 3(f), (h)

and the Economic Community of West African States the established (ECOWAS) for the DRC, Rwanda and Sierra Leone respectively²¹⁶.

SADC developed its own conflict prevention and management mechanism called the Organ on Politics, Defense and Security (OPDS) in 1996 through its Protocol. Its mandate was to guard against impending danger as a result of crises arising from law and order, intra-state conflict and aggression²¹⁷. However, the impact of SADC was not really felt in the conflict in the DRC. This is compounded by the fact that it had weaknesses of institutionalized approach to conflict prevention. This could be seen in the fact that the organization had not been able to prevent and manage the protracted civil war in Angola which lasted for so long, even before the outbreak of the conflict in the DRC²¹⁸.

As concerns the conflict prevention organ in East Africa with respect to Rwanda, though there was no network to this effect, IGAD has been bridging this lacuna since it had instated its own Mechanism called (Conflict Early Warning and Response Network) CEWARN, since 1995²¹⁹. This network was however created only after the outbreak of the genocide, and therefore, most of the prevention and management of the genocide in Rwanda was done by the OAU and the UN²²⁰.

The established ECOWAS of 1975, created its mechanism for conflict prevention, management and resolution, peace and security in 1999²²¹. ECOWAS relies on its ECOMOG forces to intervene in member states where there is an alert of threat to international peace²²².

The conflict prevention strength of ECOWAS through ECOMOG was felt in Sierra Leone in 1998 and the UN lauded their efforts for they succeeded to quell the insurgence²²³ and the

²¹⁶ n 214 above 61,62

²¹⁷ n 214 above 62

²¹⁸ SARDC Renaissance ‘ Time for stronger conflict resolution mechanism’

<http://www.sardc.net/sd/renaissance%208/comment.html> (accessed 25/01/2011)

²¹⁹ n 214 above 61

²²⁰ n 13 above 75-78

²²¹ n 214 above 60

²²² n 214 above 61

²²³ In UN Security Council Resolution 788 of 1992

subsequent re-enthronement of President Tejan Kabbah as the incumbent President, after he had been ousted and sent into exile in Guinea²²⁴.

4.2.2.2 Peacemaking, peace building, peacekeeping

Peacemaking is a diplomatic measure to transform a violent conflict into a non violent peace dialogue. This might take the form of arbitration, negotiation and mediation²²⁵.

Peace building is a process in post conflict reconciliation that facilitates the establishment of durable peace by addressing the root causes of the conflict via transformation, reconciliation and institution building²²⁶. It is a two phased process: the deconstruction of structures of violence and the construction of structures of peace²²⁷.

Peacekeeping is the intervention of a military third party to facilitate the transition from violence to stable peace²²⁸.

All the three concepts above are applicable only during conflict or after, so to say, they are measures towards positive peace in this mini-dissertation. In Rwanda it was the United Nations Observer Mission in Rwanda (UNOMIR) and United Nations Assistance Mission in Rwanda (UNAMIR)²²⁹, in the DRC it was United Nations Observer Mission in Congo (MONUC)²³⁰ and in Sierra Leone, it was the United Nations Assistance Mission in Sierra Leone (UNAMSIL)²³¹.

Peacekeeping has been successful in the various countries to quell hostilities or assisted in maintaining a peaceful transition to peace. In the DRC, the MONUC forces were increased in the territory as a result of the then secretary general of the UN's appeal, to monitor and implement the Lusaka accord. In his previous report to the Security Council, he mentioned the necessity for this increment to resolve the problem of screening arm groups to ascertain those responsible for wanton killing and other war breaches, including the disarmament of

²²⁴ n 107 above 151-152

²²⁵ n 27 above conflict prevention, management and resolution approaches to human rights

²²⁶ n 43 above

²²⁷ n 27 above Introduction to conflict, violence and peace building concepts

²²⁸ n 27 above conflict prevention, management and resolution approaches to human rights

²²⁹ n 13 above 70

²³⁰ n 15 above 37

²³¹ n 43 above

armed groups. This was in attempt to minimize the violation of human rights, and came to be known as phases i, ii and iii of MONUC²³².

Peacekeeping therefore serves as a preventive mechanism in the interest-based approach because, the combination of military and civilian parade on a 'neutral corridor of the truce line' which has been demilitarized, avoiding or obstructing the return to hostility from either side of the warring parties, has thereby let to maintaining the non violation of human rights²³³.

In Rwanda, by 1993 the UN Security Council created the UNAMIR after having hailed the Arusha Accord of the cease-fire agreement. This was later merged with the United Nations Observer Mission Uganda-Rwanda (UNOMUR), which had been previously established after a cease-fire agreement between the RPF/A and Government in Dar-es-Salem for the purpose of scrutinizing the non entry of military equipment in Rwanda²³⁴. This step depicts how the presence of the peacekeeping forces can obstruct the continuation of hostilities, by way of not allowing the entry of military supplies. This initiative curbs the possibility of human rights violation with arms and makes the mechanism reliable as a preventive mechanism.

In Sierra Leone, the Security Council of the UN through its resolution 1289 (2000) of 7 February 2000, revised the mandate of the UNAMSIL to imbibe amongst others the guarding of weapons, the collection of military weapons which were used by the rebels fighters and to destroy them. The UNAMSIL forces also had to ensure the safety of UN workers in the country and to protect the lives of civilians, under the threat of violence from insurgent groups²³⁵. These are initiatives put in place to debar the warring forces from reigniting hostilities, since these cease-fire forces stand as a neutral block, defending either party from action. This therefore prevents violence and the subsequent violation of human rights.

Peace building has been a very vital instrument, in the three countries to prevent the violation of human rights. In the DRC, as elsewhere, peace building efforts are a combination of a number of events leading to sustainable and durable peace. On 3 June 2001 the DRC adopted

²³² n 15 above 33, 43, 57

²³³ A Chadwick 'Building peace: A global learning process' in M Merryfield & R Remy (eds) *International conflict and peace* (1995) 127-160 at 138

²³⁴ n 13 above 69

²³⁵ n 14 above 36

the Charter on human rights which annulled the death sentence, laid a foundation for democracy and made equality amongst all Congolese citizens, a reality. Balanda Mueki chaired a commission which oversaw measures put in place to ensure national dialogue and even to propose recommendations to government²³⁶.

The further initiation of a constitution and organization of elections led to the reconfirmation of Joseph Kabila as the incumbent President and sharing power with a number of opposition leaders in a four prime minister resolution, with Jean-Pierre Bemba as the first Prime Minister and the others from other parties. This is an effort to regain the confidence of the citizens since it is through their endorsement that these people take office, and therefore there will be no opposition and peace and conflict prevention will be ensued²³⁷

One of the reasons of hostilities in Rwanda was that, since after the 1957 upheavals, some Tutsis were abandoned as refugees out of Rwanda, the Arusha accord of 1992 demanded that these persons be brought back home to participate in domestic activities like legitimate citizens. In 1996 after the genocide, with the cease-fire accord of Arusha, more than 1,100,000 refugees were repatriated to Rwanda. This was an effort to adhere to the demands of the citizens, which will go a long way to build durable peace²³⁸.

The suppression of the 'Radio Mille Collines' which was the principal organ for the propagation of Tutsi hatred and denigration was a great step to Peace building since it is the deconstruction of a structure for violence. The subsequent operation of the Arusha peace agreement to set up an international tribunal as per chapter vii of the UN Charter, to prosecute those responsible for the perpetration of egregious crimes is a means of suppressing impunity and to send a message to future potential violators of human rights²³⁹.

In Sierra Leone, piece building efforts were carried out in the form of participation and organizing elections: hedge-free elections were conducted with the RUF participating, the

²³⁶ n 15 above 68

²³⁷ D Kadima et al 'Elections and democratization in the DRC' (2009) 8 *Journal of African Elections* 14-48 at 17

²³⁸ n 75 above

²³⁹ n 13 above 82

establishment of the SCSL to try violators of international human rights and the Truth and Reconciliation Commission to combat impunity²⁴⁰.

Moreover, amnesty was granted to members of the RUF who took part in the hostilities and the leader of the RUF, Foday Sankoh was made the general overseer of the diamond mines in the new government by the Lomé Agreement and a resolution to create a commission in charge of the review of the Constitution and a new human rights commission²⁴¹. This is a peace building measure, aimed at satisfying the main stakeholders to the hostilities, so that the reason for which they plunged into hostility is resolved and room can be given for the emergence of durable peace to reign.

4.3 The resolution of conflicts

Conflict resolution aims at resolving conflict through negotiation to an ultimate end by satisfying all the parties opposed in the hostilities by addressing the root causes and getting to a solution favorable to all parties in a ‘win-win’ outcome²⁴². In conflict resolution emphasis is laid on the respect of parties involved through cooperation, non-confrontation, non-competition and positive-sum orientation²⁴³. Conflict resolutions are done through the medium of peace agreements otherwise known as peacemaking and Truth and Reconciliation Commissions as will be analyzed below.

4.3.1 Peace agreements

Looking at the DRC peace agreements, the position that all warring parties must be present for the peace agreement to be successful was lent credence, when preparations ‘in the run up to the Lusaka’ cease-fire agreement met with an impasse because two major parties were not invited: The Congolese Rally for Democracy (RCD) and Laurent Kabila²⁴⁴.

The Lusaka peace agreement went through a number of thorny and turbulent paths but finally came to a breakthrough, when President Kabila and Museveni signed a cease-fire accord in

²⁴⁰ n 43 above

²⁴¹ n 14 above 34

²⁴² M Anstey *Negotiating Conflict* (1991) 91-92

²⁴³ n 27 above conflict prevention management and resolution approaches to human rights

²⁴⁴ H Solomon ‘Towards regional security integration in South Africa: prospects and challenges’ in A Bujra & H Solomon (eds) *Perspectives on the OAU/AU and conflict management in Africa* (2004) ACARTSOD, CEN-SAD and DPMF 197-263 at 211

Sirte in Lybia with Muammar Gaddafi as the initiator. This cease-fire Accord however, did not fare any better because Rwanda and the RCD objected to the Accord and this led to the subsequent mandate of the Zambian President Frederic Chiluba, under the auspices of SADC to broker the Lusaka cease-fire accord which was finally signed on 10 July 1999 between the DRC and the six states warring parties²⁴⁵. The Lusaka Agreement was an answer to the UN Security Council's call for the withdrawal of foreign troops with an accent on resolution 1341 (2001)²⁴⁶. Jean-Pierre Bemba was the pioneer rebel to sign the accord for Congolese Liberation Movement (MLC) and followed suit by the RCD, all in August 1999²⁴⁷.

However, the Lusaka Accord did not take long for a collapse to be realized because Kabila soon started pushing eastwards while RCD-Goma fastened their hold on the diamond town of Mbuji-Mayi both adduced agreement violation to rebut their reason for retaliation²⁴⁸. Another reason is that the Lusaka Accord did not conceive the viciousness of the parties with respect to monetary gains and greed to act like a driving force behind the sustenance of violence which underpinned the failure of the Agreement²⁴⁹.

In fact, President Laurent Kabila had been an obstacle to the implementation of the Lusaka Accord, refusing at one point the facilitation of the Botswana President Sir Ketumile Masire. When Kabila was assassinated in 2001, his son took over and by 2002; considerable progress had been registered with the Pretoria Agreement, preceded by the Sun City Accord. The Pretoria Accord raised the aspirations of Jean-Pierre Bemba, as the post of Prime Minister was created and attributed to his honour²⁵⁰. The Pretoria Agreement could be seen as a complement of the Lusaka Agreement since peace could not be a reality in the Great Lakes without the resolution of the conflict between the DRC and Rwanda²⁵¹. Signing the Pretoria agreement on 30 July 2002, both the DRC and Rwanda trusted the Agreement to be

²⁴⁵ n 244 above 212

²⁴⁶ Press Release SC/7479 Security Council 4596th Meeting 'Secretary-General hails Pretoria Agreement as political milestone for Peace in Congolese conflict'

<http://www.un.org/News/Press/docs/2002/sc7479.doc.htm> (accessed 28/01/2011)

²⁴⁷ n 244 above 212

²⁴⁸ n 244 above 214

²⁴⁹ n 244 above 216

²⁵⁰ n 244 above 222

²⁵¹ n 246 above 1

successful, since it addressed the root causes which engaged both sides in the hostilities. This rapprochement between the two states could then pave the way for peace to occur²⁵².

Finally, from the above, it can already be determined that the conflict was gradually being resolved, as root causes were being addressed. The Lusaka Accord saw the demobilization and disarmament of all the foreign forces after agreed negotiation to evacuate the territory. The organization of an electoral commission and Constitutional commission was a means to democratize the country and this followed by a power sharing Government which recognized all the warring parties in the Government, in a 1+4 resolution with Kabila Joseph as President, Jean-Pierre Bemba as first prime Minister (MLC), Azarias Ruberwa (RCD), Yerodia Ndombasa (Kabila Government) and Zahidi Arthur, making the four Prime Ministers²⁵³.

The path leading to peace in Rwanda took a winding move from 1992 up to the signing of the peace Accords in Arusha finally in 1993. A set of five protocols making up the Arusha cease-fire Accord was initiated between the Government of Rwanda and the rebels of the (Rwandan Patriotic Front) RPF to end a long term civil war²⁵⁴. The negotiations in Arusha began on a good footing, with all the parties being cooperative. The Rwandan Patriotic Front (RPF) reiterated the fact that they wanted the return of the rule of law, the repatriation of refugees back into Rwanda and power sharing agreements which will entail merging of Government and rebel armies²⁵⁵.

When the RPF required that Government power be transferred from the Presidency to the Parliament and the MRND reduced to a position of minority, Habyarimana subsequently abandoned the Arusha Accord branding it a 'piece of paper' since the negotiation were seriously contentious on the basis that aside that demand, the RPF also asked that the Coalition for the Defense of the Republic (CDR) party be completely sidelined from taking part in the new government²⁵⁶.

²⁵² n 246 above 2

²⁵³ n 237 above

²⁵⁴ Historical Security Council: Arusha Accords (Rwanda) <http://www.imuna.org/blogs/historical-security-council-arusha-accords-rwanda> (accessed 28/01/2011)

²⁵⁵ S Joel 'The Arusha Accords and the failure of international intervention in Rwanda' <http://www.wilsoncenter.org/subsites/ccpdc/pubs/words/8.pdf> (accessed 28/01/2011)

²⁵⁶ n 255 above

The integration of the armed forces became the most recognized impasse to the conclusion of the Arusha Accords. Hard-liners like Colonel Bagosoro threatened to unleash disaster if the army was divided in a fifty-fifty stake as demanded by the RPF. By the end of January 1993, about 300 Tutsis were already killed in Bagogwe, the home of Habyarimana's clan²⁵⁷. By February 8 1993, the RPA undermined the cease-fire and invaded the northern border of the side of Uganda and justified their action with the wanton killings and violation of human rights orchestrated by the government forces²⁵⁸.

Another cease-fire was then signed between the government and the RPF/A in Dar-es-Salaam, demanding the restitution of the forces to the initial positions they were before February and the institution of the UNOMUR by the Security Council to scrutinize the entry of any ammunition in Rwanda²⁵⁹.

The negotiation of the Tanzanian born diplomat Mpungwe, gave the MRND control over the military and the RPF control over the Gendermerie in a 60% and 40% outcome respectively²⁶⁰.

On 4 August 1993, President Habyarimana and Alexis Kanyarengwe of the RPF signed the Arusha Accord after due pressure from the international community to heed to the Accord²⁶¹.

The granting of the settlement in favor of the RPF reveals the fact that all parties were aware of the potential of the RPF getting back to the battlefield, if they came short of the appropriate settlement. Angered by the outcome of the Arusha Accords, the *akazu*, a group of the Hutu hard-liners who had members in ruling positions in the military, being the MRND and CDR, mobilized the Governmental structures, and a media called *Radio Television Libre des mille Collines* to vehemently object to the Arusha Accords²⁶². With the failure of the Accord on October 5 1993, the UN Security Council commissioned resolution 872 (1993) establishing UNAMIR with the task to implement the Accord²⁶³.

²⁵⁷ n 255 above

²⁵⁸ n 13 above 69

²⁵⁹ n 13 above 69

²⁶⁰ n 255 above

²⁶¹ n 255 above

²⁶² n 255 above

²⁶³ n 255 above

Finally, by 1996, after the cease-fire accord in Arusha, 1,100,000 refugees were repatriated to Rwanda and only an insignificant number were left in the Diaspora, and mostly the remnants of the defeated 'Interahamwe',²⁶⁴. The above analysis show how conflict resolution operates to address root causes, so that no party is left threatened, otherwise hostilities will flare up soon enough again. The power sharing and integration of military officers by both sides gave an aura of confidence and this led to the signing of the Accord.

In Sierra Leone, a number of agreements were also signed before peace was finally experienced in the country, starting from the Abidjan agreement which ended in a stalemate, then the Lomé and finally, Abuja agreements²⁶⁵. The Lomé Agreement was the outcome of a national consultative conference in Freetown in which there were representatives of governmental and nongovernmental sphere. Their ultimate aim was to re-engage the Lomé Agreement based on the Abidjan Agreement, which was left unimplemented in 1996²⁶⁶. This was an effort to lure the rebels into cessation of insurgency and to attribute to the government, the legitimacy it is due.

The Lomé Agreement then came to be signed on 7 July 1999. Amongst other things, the Lomé Agreement provided for a place for RUF in the government, appointed Foday Sankoh to be in charge of all the state mineral mines, provided for a Truth and Reconciliation Commission, created a national electoral Commission, as well as a new Human Rights Commission and a Commission for the review of the state Constitution²⁶⁷. The Agreement granted absolute amnesty to Sankoh and his combatants for whatever crime they committed in pursuance of their ambition. The UN signed the Agreement as a guarantor but however objected to crimes of grave breaches²⁶⁸.

However, the Lomé Accord was short lived as the rebels did not discharge their own part of the agreement while the Government respected everything to its entirety. The UNOMSIL and the UN High Commissioner for Human Rights had created the Truth and Reconciliation

²⁶⁴ n 90 above

²⁶⁵ n 14 above 33, 35, 36 and 37

²⁶⁶ n 14 above 37

²⁶⁷ I Rashid Sierra Leone: 'The Lomé peace negotiations' <http://www.c-r.org/our-work/accord/sierra-leone/lome-negotiations.php> (accessed 29/01/2011)

²⁶⁸ Sierra Leone web-Lomé Peace Accord 7 July 1999 <http://www.Sierra-Leone.org/lomeaccord.html> (accessed 29/01/2011)

Commission²⁶⁹. The release of abductees by the rebels was not prompt and it appeared that even between the rebels themselves, there was a faction of dissidents and this made unity of action elusive. UNAMSIL was created in Sierra Leone in October 1999 with a chapter vii mandate to use force if need arises²⁷⁰. The poorly armed UNAMSIL peacekeepers were occasionally abducted and within a month, eleven of them had been killed and this deadlock led to the Abuja Agreement²⁷¹.

The Abuja Agreement negotiated a cease-fire with the RUF and a commitment to return to the observance of the Lomé Accord; this later brought the creation of the SCSL, the Human Rights Commission and the Truth and Reconciliation Commission of Sierra Leone²⁷². The argument above shows that in conflict resolution, the ultimate aim is to address root causes that caused the hostility in the first place, by cooperating with both parties and taking keen note of their various demands, and trying to bring a compromise between both parties in a negotiated settlement as depicted between the RUF and government of Sierra Leone.

4.3.2 Transitional justice (Truth and Reconciliation Commissions) (TRC)

Moreover, the *raison d'être* of transitional justice goes well beyond mere prosecution of perpetrators, it should be looked upon from the holistic perspective, where five components abound, combining retributive and restorative justice. These factors range from: truth recovery, reconciliation, institutional reform, accountability and reparations²⁷³.

Justice could be considered as a tool for peace building, in the instant of international crimes, constituting egregious and systematic violation of human rights, threatening international peace, such crimes will for no reason whatsoever, be granted amnesty²⁷⁴. Again, the mandate of the truth commissions help facilitate the ascertainment of individual criminals, and thus

²⁶⁹ n 14 above 35

²⁷⁰ n 14 above 36

²⁷¹ n 14 above 36

²⁷² D Shea 'Between the insidious and the sanitised: national human rights institutions and human rights language in Africa' in J Akokpari, and D Shea (eds) *Africa's human rights architecture* (2008) 120-145 at 124-129

²⁷³ A Boraine 'Transitional Justice' in C Heyns and K Stefiszyn (eds) *Human rights, peace and justice in Africa: A reader* (2004) 365-369 at 366

²⁷⁴ D Orentlicher 'Settling accounts revisited: Reconciling global norms with local agency' (2007) 1 *International Journal of Transitional Justice* 10-22 at 18

this will deter the imposition of ethnic or collective guilt and rather the establishment of individual guilt, exhumed from the truths told. An example of this could be seen in the Nuremberg trials, where the guilt of the Nazi leaders, was established beyond reasonable doubt²⁷⁵.

Truth commissions accentuate the restoration of the victim in the first place, and seek to reintegrate the perpetrator in the same community in which he caused the atrocities, to be accepted back by his people. The Rwandans had not really set up a truth and reconciliation commission as a matter of fact, but the *gacaca* undertook that function, since it aimed at restoring the victims and reintegrating the perpetrator which is the aim of such a commission²⁷⁶.

In the DRC, such commission was not also established; however, the hostilities are far from being over, with the LRA of Joseph Kony increasingly opening fire in the eastern part²⁷⁷.

In Sierra Leone, the Truth and Reconciliation Commission was established by article VI paragraph 2 (ix) of the Lomé Agreement. The government then enacted the Truth and Reconciliation Act 2000 (Act No. 4 of 2000)²⁷⁸. The aim was to grant political amnesty to rebels and government forces who committed atrocities in the course of the insurrections. It was considered not all involved in the incursions of the RUF had to be prosecuted, since there had to be reintegration in the community, individual truth had to be told about the killings and forgiveness had to follow, while the community reconciled with the former rebels. The High Commissioner for Human Rights however objected to amnesty against international crimes²⁷⁹.

The TRC therefore seeks to resolve conflict by also addressing the root causes. It leaves both parties to the conflict satisfied because the perpetrator is not completely set free, but is given

²⁷⁵ R Goldstone 'Justice as a Tool for peace-making: Truth commissions and international criminal tribunals' in C Heyns and K Stefiszyn (eds) *Human rights, peace and justice in Africa: A reader* (1996) 369-371

²⁷⁶ n 48 above 43-44

²⁷⁷ Oxfam 'Conflicts in the DRC: background' <http://www.oxfamamerica.org/emergencies/conflict-in-drc/background> (accessed 30/01/2011)

²⁷⁸ Sierra Leone Government White paper on the report of the Truth and Reconciliation Commission June, 2005. 1

²⁷⁹ n 14 above 26

punishment in the form of community service in order to restore the victim, then still restore them to their original relationship which was non-confrontational by reconciling the victim and perpetrator and making the perpetrator accepted back in the community he hurt so seriously. However, through Truth Commissions, impunity could be addressed in that the process of ‘naming names’ could really act like a discrediting factor to the perpetrator and this could threaten him to be ousted from the position of authority, or debar him from assuming such position in future, if he had any such political ambition²⁸⁰.

4.4.1 Benefit of this paradigm

The interest-based approach satisfies the two parties since it is an agreement and not a victory. If done correctly, it will be of less cost emotionally, and will assure a long term relationship transformation as opposed to short term problem solving²⁸¹.

It gives conflicting parties the opportunity to solve their problem themselves through a variety of techniques depending on the specific context of the complaint²⁸². There is more participation in this process, compared to the rights-based approach, where parties are represented by legal counsel and their arguments based on an analysis of the values and needs of the parties²⁸³.

Relationships are preserved and parties are more satisfied with the outcome, since their needs are all met in a ‘win-win’ outcome. This reduces the chances of a renewed conflict²⁸⁴. For instance, in countries where after renewed conflicts, all parties will be required to co-habit the same environment, namely the victims and perpetrators like in the DRC, Rwanda and Sierra Leone, the interest-based paradigm is more appropriate, except for grave breaches. This preference of the interest-based approach is as a result of the fact that the rights-based paradigm is adversarial and will leave them suspicious of each other at all times. An example

²⁸⁰ H Varney ‘The importance of truth and reconciliation commissions to the process of re-establishing a new situation of peace and security in Rwanda’ n 175 above 201-209

²⁸¹ Answer Com ‘what are the benefits of successful conflict resolution’ http://wiki.answers.com/q/what_are_the_benefits_of_succesful_conflict_resolution (accessed 30/1/2011)

²⁸² CADRE ‘conflict resolution education: goals, models, benefits and implementation by Tricia S. Jones. PHD ‘ <http://www.directionservice.org/cadre/cr-education.cfm> (accessed 30/01/2011)

²⁸³ n 27 above at Introduction to conflict, violence and peace building concepts

²⁸⁴ n 1 above 10

is the Jews and Germans in the Nuremberg Trials. The Jews had to leave Germany after the trials anywhere, so prosecution was an option. However, in a community like South Africa where the black and whites were still to co-habit the same community, the interest-based paradigm was the best option²⁸⁵. This position can be equated to the situation of the three countries in question. That is to say in Rwanda, the Tutsis were still going to live with the Hutus and in the DRC and Sierra Leone, the citizens and rebels were going to live together at the end of the wars.

Fewer resources are used, the solution is more prompt than in the rights-based approach, where courts are usually overburdened and cases take too long for judgments to be handed down²⁸⁶.

The root causes of the conflict are resolved, and since the outcome of the conflict is not imposed on the parties, but rather their agreement, they are less likely to be opposed by one party and thereby, making agreement sustainable²⁸⁷.

4.4.2 Limitation of this paradigm

On the downside, this paradigm sometimes promotes conflict. This is to say that, whenever an opposition group is not in agreement with the government, it may summarily embark on hostility because it knows its members will not be prosecuted, but rather their action would easily yield to a compromise between themselves and government, wherein power sharing will be an absolute option for the sake of peace. An example is the case of Kenya. Seeing that Zimbabwe and also *Côte d'Ivoire* bowed to power sharing after post election violence, the President of Kenya also refused to quit power after his defeat in the elections, this also led to power sharing. In a nutshell, this paradigm breeds impunity.

This paradigm does not have a power to establish precedents like the rights-based paradigm. Here, there is no guarantee that one party's situation will get the same verdict similar to that of a previous situation of the same nature. This means that, after the resolution of that problem, no legal protection has been enforced that will discourage future violations. The agreements reached in this paradigm are limited only to the specific situation at hand and

²⁸⁵ M Mahmood 'When does reconciliation turn into a denial of justice' in C Heyns and K Stefiszyn (eds) *Human right, peace and justice in Africa: A reader* (1998) 372-382 at 377-378

²⁸⁶ n 1 above 28

²⁸⁷ n 1 above 33

does not have any deterrent value, so this paradigm has little propensity of preventing human rights abuses.

The rights-based paradigm accentuates peace at the expense of grave or egregious violation of human rights. However, focusing more on peace and not afore-hand respecting human rights, is like putting the carriage before of the horses which of course will impede movement. There will be no need to negotiate peace if human rights are put top of the agenda in any policy in the DRC, Rwanda and Sierra Leone. Structural violence leads to physical violence or hostilities. If there is no discrimination, inequality, inequity, poverty which is a result of bad policies, exclusion, dictatorship, corruption and embezzlement, then I think peace efforts will be of less concern. This is a flaw in the interest-based paradigm.

4.5 Conclusion of chapter four

Looking at the facts advanced above, one clearly sees that the two paradigms operate on two parallel lines, and have two different approaches to get to the same objective, which is peace and justice. However, credence should be lent to the interest or needs-based approach, which slightly towers a foot above the rights-based perspective, by creating a platform for opponents to solve their problem by themselves. Thus redefining and promoting relationships, while entrenching and maintaining assurance in the non reoccurrence of the conflict. This non re-occurrence of renewed conflict is motivated by the fact that the parties who incited the conflict are all satisfied with the outcome of the process, because this outcome is the agreement of the parties themselves.

CHAPTER FIVE: A SYNERGY OF THE RIGHTS-BASED AND INTEREST-BASED APPROACHES TO CONFLICT RESOLUTION IN THE DRC, RWANDA AND SIERRA LEONE

5.1 Introduction

This chapter will give a brief history of the reason as to why the two fields have been in competition with each other. The chapter will then ascertain the reason why their synergy will be necessary in bringing about peace and justice in the DRC, Rwanda and Sierra Leone and finally, what the benefits of this integrated approach are. In order to transcend conflict constructively, there has to be equipoise in both peace and justice. The overemphasis on the one approach, while ignoring the other, is not an advisable way to promote and protect human rights. Therefore, to ensure the protection and promotion of human rights, both peace and justice must be made the point of focus, and not trading one for the other.

5.2 Variables inhibiting the synergy of paradigms: competition and contradiction

The most cited one here is ‘peace versus justice’. Conflict resolution practitioners always accentuate peace as a precondition to justice, and believe justice cannot be carried out in chaos²⁸⁸. The interest-based approach, in other words, is the application of local remedies for local conflict. The rights-based on the contrary, is the application of international norms in a local conflict, which might be looked upon as an alien remedy by the stakeholders to the conflict. Hence, the Special Court for Sierra Leone was caught in a dilemma to execute its mandate of prosecuting perpetrators of the internal armed conflict of March 1991 as per article 2-4 of the Court’s Statute, even though, the Lomé Accord in the peace process had granted the rebel combatants immunity from prosecuting them of their human rights atrocities²⁸⁹. In this situation, there is a glaring contradiction and competition as to which approach legitimacy is better entrenched. This is compounded by the human rights actors’ argument that; there exist some crimes to which amnesty can never be granted such as war crimes, crimes against humanity, genocide²⁹⁰, yet the conflict resolution practitioners are

²⁸⁸ n 1 above 10

²⁸⁹ E La Haye *War crimes in Internal Armed Conflicts* (2008) 241-255 at 41

²⁹⁰ n 273 above 18

interested in granting amnesty to these rebel combatants, so that a ceasefire is given, then there can be room to address the roots causes and also do justice²⁹¹.

Once more, the two paradigms have worked parallel to each other because the field of human rights have always been trying to superimpose its own provision to peace as being that which should be given precedence over that of conflict resolution whenever the two were in conflict, not paying attention to the fact that by so doing, the enterprise of peace may rather be put to jeopardy. It is worth noting that, while the protection of fundamental human rights requires the necessity for peace, a nascent regime of protection for human rights is not needed to ensure the cessation of hostilities. To the human rights actors, surprisingly, safeguarding an international human rights norm is more urgent than reaching a peace agreement²⁹².

This is why one anonymous author in a human rights journal accused international human rights for “increasing the death, suffering and destruction in its pursuit for a perfectly just and moral peace” that will bring “justice for yesterday’s victims of atrocities”, but instead made “today’s living the dead of tomorrow”²⁹³.

5.3 Why a necessity for a synergy of the rights-based and interest based approaches?

The relationship between the rights-based and interest-based approaches is more characterised in adversarial and competitive terms, and less in terms of complementarities, partnership, and dialogue. For greater effectiveness and knowledge of each other’s field, a synergy will help the actors in the two approaches to constructively transcend the tension between the two of them²⁹⁴.

This is made more illustrative by the fact that, to successfully institute a peace process that will guarantee sustainable peace and justice, both armed factions to the conflict have to be part of the agreement²⁹⁵. The actor intervening should have a combination of the skills of a

²⁹¹ T Putnam ‘Human rights and sustainable peace’ in S Stedman et al (eds) *Ending Civil wars: the implementation of peace agreements* (2002) 237-272 at 240-241

²⁹² n 289 above 240

²⁹³ Anonymous ‘Human rights in peace negotiations’ (1996) 18 *Human Rights Quarterly* 249-259 at 259

²⁹⁴ P Baker n 3 above 565

²⁹⁵ n 1 above 11

facilitator and an advocate²⁹⁶ so as to bring a balance in the needs and interests of the parties; otherwise the process will be seen as flawed in the eyes of one party²⁹⁷. This position accounts to the reason why Nelson Mandela brought the two factions of belligerents in the Arusha Peace Process of 2000²⁹⁸.

The necessity for the synergy of the two paradigms is made more vivid, by the fact that, in order to have a balance and sustainable peace agreement, the agreement is usually characterised by elements of the rights-based and interest/needs-based paradigms in the form of power sharing agreements, Truth and Reconciliation Commissions and tribunals for individual accountability on human rights atrocities²⁹⁹.

5.3.1 Sustained denial of human rights as signs and causes of structural violence

The following facts will suffice to depict the relationship between the rights-based and interest-based paradigms. I will advance a number of conflict situations which have culminated in the violation of human rights, and situations as well which will confirm that signs or symptoms of human rights violation incite violent conflicts in the three countries. The numbers of uncountable conflicts that have been registered on the continent within the last three decades, undoubtedly reiterate the fact that the cultures of violence and abuse have become entrenched in these communities³⁰⁰.

The case of amputation and mutilation of body parts of civilians by the combatants of Foday Sankoh's RUF of Sierra Leone and their continuous destruction of livelihoods and the mandatory denial to grant access to humanitarian relief missions by belligerent parties³⁰¹: show how conflict situations can fuel the violation of human rights. Moreover, a number of defined human rights issues have brought about conflict. Most especially, in Africa, many conflicts have been incited as a result of violation of second generation rights like social and

²⁹⁶ n 24 above

²⁹⁷ R Holbrooke *To end a war* (1998) 107-108

²⁹⁸ <http://usinfo.state.gov/regional/af/security/a0022203.htm> (accessed 31/01/2011)

²⁹⁹ n 1 above 13

³⁰⁰ M Parlevliet 'Iceberg and the impossible human rights and conflict resolution in post settlement peace building' in E Babbitt & E Lutz (eds) *Human rights and conflict resolution in context: Colombia, Sierra Leone, and Northern Ireland* (2009) 248-288 at 253

³⁰¹ n 1 above 14

economic rights and also group rights³⁰², resulting from discrimination, exploitation and self determination which are evident of underlying conflicts. They are always both civil and political and socio-economic nature³⁰³. However, during violent conflicts, first generation rights are more frequently infringed and also serve as triggers³⁰⁴. That is to say, an arbitrary imprisonment or extra-judicial execution of a leader, killings and indiscriminate torture might trigger violence.

Other situations also abound, whereby, the outbreak of fierce conflict portrays the fact that inequalities and inequities³⁰⁵ have been imbedded in governance structures, and this sustained denial of rights perpetually frustrates the suppressed, and since their needs cannot be satisfied, they can only but turn to violence to express their dissatisfaction like in Sierra Leone³⁰⁶.

The appellation attributed to the Tutsis by the Hutus as *inyenzi* meaning cockroaches is demeaning and inhuman and this later on resulted to the genocide. Though this appellation was previously used between the Tutsis themselves in a non negative manner, the Hutus' usage had an inferiority complex undertone. This shows how the marginalisation of a group of people, leads to conflict, as seen in the subsequent genocide lunched on the Tutsis by the Hutus³⁰⁷.

This therefore follows the confirmation of Galtung and Nathan that the absence of peace is usually spurred by injustice or the absence of justice, and the presence of justice so to say, promote both negative and positive peace³⁰⁸.

5.3.2 Conflict resolvers and human right actors be schooled in each others' skills

³⁰² P Nherere & K Ansah-Koi 'Human rights and conflict resolution' In L Goran et al (eds) *Issues in the third world conflict resolution* (1990) 3-42 at 24-27

³⁰³ n 300 above 255

³⁰⁴ T Oscar & J Ron 'Do human rights violations cause internal conflict?' (2007) 29 *Human Rights Quarterly* 674-705 at 694-695

³⁰⁵ K Annan Prevention of armed conflict. Report of the Secretary-General to the United Nations General Assembly and Security Council document A/55/985-S/2001/574

³⁰⁶ n 298 above 254

³⁰⁷ n 87 above 261.

³⁰⁸ n 1 above 19

The main aim of schooling interest-based actors in human rights activities is for them to understand the rights denial potential of conflict. If they are unaware of this, they might adopt an intervention strategy, which is not commensurate to the rights violated and thus will not halt the evolution of the conflict. Moreover, human rights seek to protect everyone irrespective of constraints, therefore in peace processes, conflict resolvers can take up the task of educating conflicting parties on the importance of respecting human rights, which will endorse their national and international recognition and legitimacy will be ingrained in any negotiation, enhancing cooperation³⁰⁹.

More so, if the interest-based actors themselves are unaware of the human rights aspect in conflict, they would forgo addressing the underpinning causes, and concentrate more on the surface visible causes which ignited the conflict. Yet, the identification of human rights as the primary cause will galvanise the conflict practitioner to integrate human rights from the beginning of the negotiation process, which also transcends structural discrimination³¹⁰, and helps the practitioners pursue their intervention within the legislative and constitutional frameworks and in line with human rights instruments³¹¹.

Giving assistance to civilians locked in areas occupied by insurgents can send out negative waves, or perceptions of collaboration with the enemy, this needs to be managed. There is bound to be the outbreak of conflict where people of diverge culture and ethnic groups are confined together, like refugee camps. Considering humanitarian intervention to be politicised in violent conflict zones, necessitates the Organisation involved to play key management roles in conflict³¹².

Humanitarian intervention bodies like the ICRC and UNHCR though not conflict managing bodies, might have to negotiate cease-fires with warring parties, in order to gain access to war torn areas for the sake of salvaging the group of people affected by the violent conflict and grant their needs³¹³. This depicts the fact that these humanitarian bodies have the resolution of conflict, unarguably, as part of their mandate. It therefore follows of necessity that these

³⁰⁹ n 1 above 30

³¹⁰ n 1 above 31

³¹¹ n 1 above 30-31

³¹² n 1 above 34

³¹³ L Nathan 'No refuge from conflict. A conflict resolution perspective on UNHCR,' (2000) 9 *Track two* 57-60

bodies receive training in conflict resolution so as to employ the most apt intervention strategies, consistent with the situation at hand³¹⁴.

Finally, human rights actors in the course of their duty might always have their course thwarted by government officials who see their duty of protecting human rights as a menace to governance. Human rights actors will therefore require interest-based approach or negotiation skills, since most often, for them to gain access to confines where rights have been grossly violated, negotiation is required, extending as far as ensuring access to prisoners³¹⁵.

5.4 *Ubuntu* as a point of fusion of the two approaches

This is an aspect of African philosophy, which like many other African concepts, is very difficult to be defined³¹⁶. However, it has been described as representing morality, humaneness, personhood and humanity³¹⁷. A philosophy based on brotherhood and solidarity wherein this solidarity is paramount to the survival of the entire community and with lack of resources, the fundamental belief then becomes *umuntu nyumuntu ngabantu*, translated it means: a person can only be a person through others, what one person does affects the others, and all other persons suffer if one person is affected³¹⁸. With *ubuntu*, I am a human being because of the simple fact that I participate and share³¹⁹. The philosophy of *ubuntu* seeks to assert the fact that, instead of looking at conflict like a ‘win-lose’ situation, *ubuntu* is rather a relationship which brings people together, in which there can be diversity and difference³²⁰. It is a philosophy which seeks to establish a balance between the good and bad, ‘self and others’. The objective of *ubuntu* is to make mutual beneficial conditions acceptable. It accentuates cooperation within the community, rather than competition which could convey people to systematic instability in any community³²¹. The concept *ubuntu* has been made

³¹⁴ n 1 above 34

³¹⁵ K Arnold n 3 above 1-3

³¹⁶ n 49 above

³¹⁷ n 49 above

³¹⁸ n 49 above

³¹⁹ N Mechthild Ubuntu and indigenous Restorative Justice

<http://africaworkinggroup.org/files/ubuntuBriefing3.pdf> (accessed 31/01/2011)

³²⁰ n 27 above at Introduction to conflict, violence and peace building concepts

³²¹ n 319 above

popular through South Africa's reconciliation work following apartheid. Desmond Tutu is of the opinion that 'a person with *ubuntu* is open and accessible for others, primed with assurance, deriving from the experience of African solutions to African intergroup conflicts'³²².

Ubuntu is also a call made by President Thabo Mbeki, for an 'African Renaissance'³²³. This concept is central to the idea of reconciliation. According to Prof Mogobe Ramose, '*ubuntu* is a wellspring that flows within African existence and epistemology in which the two aspects *ubu* and *ntu* constitute wholeness and ones'³²⁴. Thus *ubuntu* depicts the generality and ones of being human, philanthropy and love for others are fostered through a feeling of interconnectedness, and if I offer a gift of charity to another, I am sure of actually giving to myself. Interconnectedness between human beings foregrounds respect for the older generation and compassion with the needy³²⁵.

The literature above depicts that *ubuntu* does not oppose indictments in toto, but on the contrary when it is employed it should be done in such a shrewd manner that the enterprise of reconciliation and forgiveness are not disregarded, distorted or discarded. In this manner, the two concepts of rights-based and interest-based still remain together and promote interconnectedness.

5.5 What are the benefits of this paradigm?

It articulates reasons for not operating separately or operating in competition. Their synergy will breach the gap between human rights violation and peace, thus promoting and protecting human rights in the DRC, Rwanda and Sierra Leone.

Both human rights actors and conflict management practitioners will gain an insight from each others' field, and this will enhance efficiency in restoring peace and justice in the DRC, Rwanda and Sierra Leone.

³²² n 319 above

³²³ E Bongmba 'Reflections on Thabo Mbeki's African Renaissance'

<http://www.jstor.org/stable/4133837>

³²⁴ M Ramose 'An African perspective on justice and race' <http://them.polylog.org/3/frm-en.htm>

³²⁵ n 319 above

With the knowledge acquired by each actor from one another's field, will help them to be able to detect an early conflict trend or an impending human rights violation as a root cause to violent conflict and intervene timely, restoring negative peace by transcending ingrained inequalities. This will thus maintain peace and justice in the DRC, Rwanda and Sierra Leone.

More and more, it is being established that durable and sustainable peace can only be ensued when conflict is resolved in such a way that all parties affected come out victorious or happy with the outcome. Yet it is commonplace to find some parties trying to flare up insurgency action, after a resolution has been reached as was the case with Nkunda Laurent in the DRC in 2008 after elections³²⁶. For this reason, therefore, the integrated approach of rights-based and interest-based should be lent credence for the sake of not only reaching an accord, but also prosecuting those charged with grave human rights and humanitarian breaches. This will undoubtedly extend the life span of peace in the three countries under scrutiny since all possible variables of violence have been addressed.

5.6 Conclusion

The mini-dissertation with respect to the three countries under scrutiny portrays three different perspectives of conflict trend in Africa. They range from contemporary African dilemmas such as corruption and embezzlement in the case of Sierra Leone. The imbued colonial system of divide and rule sowed the seed of racial discrimination in the case of Rwanda and the new trend of autocracy, dictatorship and divide and rule which characterised governance in the DRC from Mobutu up to Kabila. In a broad-base understanding, the interest-based and rights-based approaches portray democratic governance and the rule of law. Governance should be seen as much as possible, open to the masses. However, this should be done within the ambit of prescribed laws in order to maintain peace and security, lest the political dispensation would operate like a horse without a bridle.

Due to the tribal diversity in these three countries and in Africa in general, a single approach will always give the possibility of renewed conflicts. In other words, if the rights-based approach is used exclusively, prosecuting an insurgent group supported by one ethnic group will raise opposition to their prosecution. The reason being that they will feel rejected on the basis that their interests and desires are not recognised and this will flare up violence. On the other hand, satisfying the needs of all disputing parties as per the interest-based paradigm

³²⁶ n 252 above 43

legitimizes their action since no prosecutions are directed towards any group for perpetration of egregious crimes. This vindication will give the leeway to potential abuses in the future, since they are sure no legal action will be introduced. This impasse therefore makes a synergy of the two approaches imperative. In this way, root causes will be addressed by satisfying both parties, but impunity will also be addressed through prosecution for the international crimes committed in the cause of the insurgency. In a nutshell, the rights-based approach could come in to complement the interest-based approach by regulating the negotiated settlement to fall within the confines of constitutionalism and internationally accepted norms. This will incontestably assure the promotion and protection of human rights in the post-conflict DRC, Rwanda and Sierra Leone.

In this vein then, Nelson Mandela once said ‘always remember that what matters is not only the good you bring but just as much the bad you prevent’³²⁷. The rights-based proactive approach is as much important as the reactive interest-based approach to complement the resolution of conflicts in the DRC, Rwanda and Sierra Leone.

This chapter has succeeded in establishing that human rights and conflict resolution are two different sides of the same coin and, therefore, could be integrated to become more complementary. What has actually inhibited or exacerbated the slow integration of these two approaches is the perspective of each field towards ending the violent conflicts. The interest-based paradigm seeks to stop violence and bring peace, but the rights-based paradigm does not only seek to bring peace, but qualitative peace. As a matter of fact, more collaboration in these two approaches would bring more sustainable peace in these countries. The two approaches have to engage extra collaboration which will render the two paradigms complementary, than working on two parallel fronts. Therefore, their integration would introduce an innovative approach which brings peace within the confines of a constitutional framework, legislation and international law, thus entrenching a degree of legitimacy, agreed upon by the parties themselves. This legitimacy will radiate waves of sustainability in the protection and promotion of human rights in the DRC, Rwanda and Sierra Leone, with peace and justice.

³²⁷ http://www.Icrc.org/eng/assets/files/other/Ircr_850_steward.pdf (accessed 02/02/2011)

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