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Last year, a law review solicited my thoughts about, in their words, *pushing the envelope* with social justice and negotiating peace in a world dominated by power and violence.[1] Taking their language literally, one must ask how to effectively address contemporary obstacles to ensure that the message and, most importantly, the means of justice are truly delivered to those in need.[2] One answer—which may seem obvious to readers but is actually much too rare in practice—is to work with, empower, and support the conflict work of the community members themselves. This article introduces the plans of five African professionals, demonstrating their skill and leadership as members of diasporas and domestic circles. All five African professionals are intent on serving their communities through offering the best of conflict resolution practice, including integrative bargaining[3] and restorative[4] victim-offender mediation.[5]

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1. Thanks to my colleague, Col. Swaranjit Singh, for his assistance with this article.

2. Any pragmatic reader is likely to be moved to ask how seeds of peace can ever grow in the face of glorified violence and resultant destruction through unending attempts to dominate. Yet tension and contradiction are ever present. Those desiring peace for their families and communities are eternally called to meet these challenges with every action and choice, despite unanswered questions and doubts. Peace-builders must be as vigilant, if not more, as those intent on intimidation and manipulation. United Nations Educational, Scientific, and Cultural Organization (UNESCO) defines peace culture as:

> [A] culture that promotes peaceable diversity. . . .
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> . . . .
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> . . . The *ceaseless* culture-creating activity that characterizes the social body involves interaction at every level, from the intrapersonal . . . to the interpersonal—in household, neighborhood, and community, on through successive levels of civic organization through city to the United Nations . . . . Because there is constant interpenetration of levels, the societal capacity for aggression or peace-building depends on patterns developed in every domain . . . .

ELISE BOULDING, CULTURES OF PEACE: THE HIDDEN SIDE OF HISTORY 1 (2000) (emphasis added).

3. *See* HOWARD RAIFFA ET AL., NEGOTIATION ANALYSIS: THE SCIENCE AND ART OF COLLABORATIVE DECISION-MAKING 191 (2003). Integrative, or interest-based, negotiation was made popular by Roger Fisher & William Ury in their book, *Getting to Yes*. *See generally* ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (Bruce

457

In a recently published book on South Africa's struggle, Nelson Mandela lauds a colleague saying:

> He developed a capacity for putting himself in the shoes of the enemy and thinking through a situation from the perspective of the enemy. . . . [H]e taught the underground that it must respect rather than simply hate the enemy. If you hated the enemy, you dismissed him, depersonalized him; and as a result, you would always underestimate his ability to destroy you. On the other hand, if you respected your enemy, you never forgot how formidable he was . . . Hatred would kill you, not the enemy.[6]

Renowned leaders like Nelson Mandela deservedly receive much attention and acclaim. What matters most, though, is that their hard earned wisdom is actually practiced and spread. This article attempts to introduce a few lesser known inspirations working within—emerging voices with innovative and practical plans. Barack Obama is only one of several

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Patton ed., 2d ed. 1991). Rather than the more common distributive bargaining where parties simply divide what is being negotiated, usually through a series of concessions, an integrative process leads parties in "expanding the pie" through conflict analysis of underlying interests and creative options evaluated with principled criteria to optimize outcomes for all concerned. *See* Nancy D. Erbe, *Appreciating Mediation's Global Role in Promoting Good Governance*, 11 HARV. NEGOT. L. REV. 355, 386-89 (2006) ("Parties might ask, for example: 'How can we [both] generate ore and protect infants simultaneously?'").

4. Restoration represents a completely different approach to criminal justice than the better known retribution approach. It is defined by one leader in the field as:

> [A] systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders, and communities caused or revealed by crime. [Restorative practices] . . . respond to crime by: (1) identifying and taking steps to repair harm; (2) involving all stakeholders; and (3) transforming the traditional relationship between communities and their governments in responding to crime.

Lynette Parker, *Restorative Justice: A Vehicle for Reform?* Paper Presentation at the Annual Meeting of Latin American Studies Association, Las Vegas, Nevada (2004) (citing Daniel W. Van Ness, *Justice that Restores: From Impersonal to Personal Justice*, 23 J. OF RELIGION IN SOC. WORK, 93-109 (2004)). Truth and reconciliation commissions are the most widely known example of restorative justice. *Contra* Nancy Erbe, *Appraising Surge in Legal Scholarship Regarding Restorative Justice and Discovering Lenses to the South: Is Global Criminal Justice Necessarily Different Than United States Ideal?*, (bepress Legal Series, Working Paper No. 560, 2005), *available at* http://law.bepress.com/cgi/viewcontent.cgi?article=2750&context=expresso (arguing that truth and reconciliation commissions represent hybrid justice, combining retributive and restorative approaches to justice for highly pragmatic reasons, such as the need to force the most powerful offenders, like the Catholic Church, to dialogue through cost prohibitive lawsuits and embarrassing publicity).

5. Broadly defined, mediation is any force outside of a conflict that helps with the negotiation, resolution, and transformation of that conflict. For this article, mediation is defined as "facilitated face-to-face dialogue . . . allow[ing] communication, understanding, rehumanization of the enemy, reframing of the conflict as a shared problem to be solved[,] . . . moving towards inclusive processes of mutual empowerment . . . in a way that respects the interests, needs, and values of all." Erbe, *supra* note 3, at 371 (citing JOHN DAVIES & EDWARD KAUFMAN, SECOND TRACK/CITIZENS' DIPLOMACY 3 (2002)).

6. PADRAIG O'MALLEY, SHADES OF DIFFERENCE 1-2 (2007).

458

articulate visionaries with African roots. The coauthors highlighted here are in turn inspired by the emerging discipline of conflict resolution—a field that directly resonates with Mandela's quote above—teaching the perspective that the best negotiators know the power of thoroughly understanding their adversaries.[7] All the coauthors are accomplished professionals and scholars from Cameroon, Kenya, Nigeria, and Zambia. The coauthors will describe how to use restorative and facilitative mediation and integrative bargaining to address some of the toughest, most troubling, and costly conflicts facing their communities, nations, and continent: violent tribal conflict in Cameroon; the crippling intra-group and inter-group wounds and tensions from Britain's colonization of Kenya; the challenges of reintegrating child soldiers into viable, life sustaining communities; and the debt crisis drowning the continent.

The coauthors see and describe contemporary conflict techniques as facilitating critical societal development in a myriad of ways. In -depth conflict analysis motivates resolution, raising awareness regarding the costs of continuing conflict and guiding conscious exploration and creation of alternatives. It further ensures an inclusive process that identifies and includes all important stakeholders. Equivalent conflict training for all concerned parties balances power and builds the capacity needed to proceed with collaborative problem solving. Truly impartial and skillful facilitation of interest-based negotiation builds essential trust and confidence conflict by conflict, with every conflict solved to the parties' satisfaction. Thus, the foundation for bringing together conflicting parties is built.

Once a majority of a community stands for peaceful conflict resolution and coexistence, political leaders and elders are more likely to follow their community's lead. The coauthors agree that political and governmental stakeholders represent their greatest challenge, along with the multinational corporations who partner with these leaders and exploit community resources. The coauthors do not pretend that these are simple challenges with easy solutions. They strongly concur, however, that their societies are better prepared to confront these challenges with empowered mobilization of

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7. *See* Nancy Erbe, *Negotiation, in* 1 ENCYCLOPEDIA OF GOVERNANCE 333-34 (Mark Bevir ed., 2006). Conversely, in multiple studies, the worst negotiators and facilitators of cross-cultural processes are described as poor and judgmental listeners lacking deep understanding. Nancy Erbe, *The Global Popularity and Promise of Facilitative ADR*, 18 TEMP. INT'L & COMP. L.J. 343, 343-89 (2004) [hereinafter Erbe, *The Global Popularity*]; Andrea Kupfer Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143 162-84 (2002).

459

non-governmental and faith-based networks with communities. The coauthors also see much potential for a grassroots community to mediate daily conflict and to build "unity and diversity" through joint ventures, like the economic cooperative described in Cameroon, while rallying for responsive state institutions and leadership.

The African collective is inherently strengthened by its restorative conflict traditions as publicized to the world through South Africa's Truth and Reconciliation Commission.[8] Victim-offender mediation that includes extended family and community and negotiates amends represents a long-standing African practice.[9] Two coauthors call for harnessing this resource and proceeding with truth and reconciliation in response to erupting tensions in Kenya, as well as the difficult task of reintegrating child soldiers.

Introduced and described later by coauthor Ndi Richard Tanto, each vision exemplifies requisite reflective practice—that conflict techniques are tested and retested in the context of each particular conflict, challenge, and community—to ensure optimal effectiveness. Impartial leadership must be prepared to persist over time in the face of political pressure. Three of the coauthors represent the contemporary voice, influence, and power of the African diaspora. They are the natural leaders for bringing the West's attention to and garnering Western support for what matters most.

This article provides a rare opportunity for Western academics and practitioners in the fields of conflict and dispute resolution to learn how Africans interpret the concepts and the techniques of these fields. Rather than ask the West to guide or even to assist them, these scholars lead readers through their own analysis of what is needed, from the African perspective.

Part I presents coauthor and attorney Chinedu Ezeh's brief introduction to the history and present status of African conflict. He calls for a continent-wide infusion of conflict, negotiation, and mediation skills training for the grassroots citizenry and professionals within conflict zones.

Part II is a decade-long case study example showing that grassroots and professional training in skills, inclusion in conflict processes, and participation in day-to- day decision making can transform violent tribal conflict into a sustainable coexistence by prioritizing economic needs when empowered by an Non-Governmental Organization (NGO), such as Ecumenical Service for Peace, and mediators like coauthor Ndi Richard Tanto. Tanto describes what he views as best practices as well as ongoing political challenges in step-by-step detail.

Part III describes the working vision of coauthor Pastor Daniel Karanja in response to present-day political tensions in Kenya—the most visible

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8. *See, e.g.,* BOULDING, *supra* note 2, at 83.
9. *See generally* Erbe, *supra* note 4.

460

PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

evidence of the destructive wounds and tensions remaining from the atrocities of British colonialism. Aspiring to learn from South Africa's experience (a process in which coauthor Mubanga was intimately involved), Pastor Karanja has already taken a lead in proposing truth and reconciliation with the legislative bill he describes in Part III.

Part IV likewise stresses the importance of restorative, rather than retributive, justice in Africa. Coauthor Mbonifor explains how integrating African restorative traditions into existing family and community mediations would help reintegrate child soldiers throughout the African continent.

Part V, although the last section, is perhaps the section where the Western world needs to start. Sound, good-faith negotiation and mediation of the African debt crisis may be the only alternative the West has once it admits that its *imposed* solutions have continually failed or that it repeatedly participates in bad faith and exploitative processes when African interests are involved.

I. A CALL FOR WIDESPREAD COLLABORATIVE CONFLICT[10] RESOLUTION TRAINING TO REBIRTH PEACE

Most scholars and informed observers would agree that European colonialism had a devastating impact on Africa.[11] Developed countries freely adjusted boundaries in treaties between one another to suit their administrative conveniences without regard to the disparity between some of the groups that were being lumped casually together.[12] It is not far fetched to say that when the ruling colonialists left, their colonies were inadvertently rigged for failure from the very start.[13] The artificial boundaries created within Africa brought together ethnic people without providing for cultural diversities.[14] Nations were lumped together without regard to the fact that they were divergent and sometimes incompatible neighbors.[15] The Human

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10. Conflict is defined here as: "Any perceived divergence of interest". DEAN G. PRUITT & SUNG HE KIM, SOCIAL CONFLICT: ESCALATION, STALEMATE AND SETTLEMENT 7-8 (3d ed. 2004).

11. *See generally* GlobalIssues.org, Conflicts in Africa http://www.globalissues.org/Geopolitics/Africa?Intro.asp#TheLegacyofEuropeanColonialism (last visited Mar. 20, 2009).

12. RICHARD H. ROBBINS, GLOBAL PROBLEMS AND THE CULTURE OF CAPITALISM (2002); Bob Geldof, *Why Africa?*, STRAIGHT.COM, Nov. 10, 2004, http://straight.com/article/why-africa?#.

13. Geldof, *supra* note 12.

14. GlobalIssues.org, *supra* note 11.

15. *Id.*

461

Rights Violations Investigation Commission—the Nigeria equivalent of the South African Truth and Reconciliation Commission—, called Oputa Panel, stated in its report submitted to the then president Olusegun Obasanjo that "the various ethno-communal groups in the country, including the major ones, complain of *marginalization* in the scheme of things."[16] Most conflicts in former colonies, especially those in Africa, have struggled to rebuild themselves and find new identities.[17] In the process, Africa has seen millions of its people slaughtered and millions more as refugees.[18]

A. An Insider Perspective on Contemporary Conflict in Africa

The simplistic approach to Africa's problem is to blame colonization for all Africa's woes, but that would be wrong. In the authors' opinions, African nations, despite the wrongs of colonization, have acquired a history that can be harnessed to cultivate a culture of "unity in diversity." While the various factions wrangle for control, the fact that stands out is that they do not desire secession from the whole, but rather justice within the system. The solution lies in Africans beginning to ask each other why the events started. In the words of W.B. Yeats in the poem, *The Second Coming*: "Turning and turning in the widening gyre; The falcon cannot hear the falconer; Things fall apart; The centre cannot hold; Mere anarchy is loosed upon the world."[19]

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16. HUMAN RIGHTS VIOLATIONS INVESTIGATION COMMISSION, SYNOPTIC OVERVIEW OF HRVIC REPORT: CONCLUSIONS AND RECOMMENDATIONS 10 (2002), *available at* http://www.nigerianmuse.com/nigeriawatch/oputa/OputaSummaryRecommendations.pdf (emphasis added). Marginalization is one of the results of a tit-for-tat response to the nasty tactics of destructive power games, polarizing the parties and ensuring that they work at opposite ends rather than from constructive common interest oriented principled bargaining approaches to conflict. It finds justification in reciprocity of response, but ultimately generates a continued hostility and at best a stalemate that refuses to take actions based on objectivity and consideration for the other's point of view.

17. Boundaries of the African countries were arbitrarily set by the colonial masters without regard to tribal and cultural affinities or differences. *See* GlobalIssues.org, *supra* note 11. Persons of the same affinities found themselves in different administrative locations, while persons of dissimilar affinities were lumped together, thus creating conflicts through quests for familial mergers and non-familial separations, leading to expected intra-boundary and inter-boundary agitations. *See id.*

18. The acknowledged international responsibility to protect countries whose governments fail to protect post-Rwanda is critical to future peace-building throughout Africa and will be mentioned in this paper as relevant to specific plans (e.g., Kofi Annan's recent mediation in Kenya).

19. William Butler Yeats, *The Second Coming*, THE DIAL, Nov. 1, 1920, *available at* http://www.poetry-online.org/yeats_the_second_coming.htm.

462

Fortunately, Africa has shown resilience in its ability to withstand the various conflicts that have beset it. Coauthor Ezeh[20] is of the school of thought that in order for Africa to deal with its various conflicts, it must begin to look inwards and start developing conflict resolution mechanisms that address its peculiar conflict problems. While commending the African Union for its efforts in bringing peace to Africa, coauthor Ezeh does not think it has done enough. The Union has not shown tenacity or resoluteness in addressing its various conflicts with the view of bringing them to an end immediately, or at least reducing them to a level of positive conflict that could be exploited for development.

Conflicts have always divided communities. Not all conflicts are bad, however, because some level of conflict is required to instigate growth and development in Africa.[21] The deep moral conflict that contemporary situations generate present opportunities for rich "interpersonal learning, improved relationships, and creative collaboration."[22]

Much of the conflict in Africa today is caused by power games[23] engaged in by leaders who want to hold on to their political power for as long as they can. The national question for most African countries in dispute involves the issue of power and power sharing. In Sudan, Nigeria, Rwanda, and the Congo, the same recurring question always intrudes into the political, social, and human development of the various states.[24] The question is inevitably: Who wields the political authority and controls the

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20. Chinedu Bob Ezeh is an attorney of over twenty years whose practice in Nigeria included acting as an ombudsman.

21. THE SAGE HANDBOOK OF CONFLICT COMMUNICATION: INTEGRATING THEORY, RESEARCH, AND PRACTICE 391 (John G. Oetzel & Stella Ting Toomey eds., 2006).

22. *Id.* at 395.

23. The power game is a political manipulation game engaged in by political leaders who seek to dominate their opponents, and in turn, the opponents feel that they have no choice, but to join in the confrontation. The game of dominance progresses to the detriment of the populace, who become the pawns in the power game. William Ury postulates that the game works by a threat to the other side through force or coercion, with the hope they will back down. WILLIAM URY, GETTING PAST NO: NEGOTIATING YOUR WAY FROM CONFRONTATION TO COOPERATION 6-14 (1993). The negative result, however, is that unless you have a decisive power advantage, the other party usually fights back, reverting to anger and hostility, clinging more stubbornly to positions, and becoming increasingly resistant to reaching an agreement. *Id.*

24. *See* R.T. Akinyele, *Power Sharing and Conflict Management in Africa: Nigeria, Sudan, and Rwanda*, 25 AFR. DEV. 209 (2000) (arguing that ethnic differences played a key role in the countries' power struggles).

463

economic, natural, and human resources?[25]   All other conflicts, ethnic, economic, and even environmental, subsume under that power frame.

Each side views the power struggle in terms of short term simplistic loss or gain frames: We are in power, so we must be gaining, or we are out of power, so we must be losing. [26]   This becomes an identity framing by the parties—a winner takes all identity frame.[27]   This leads to the mad desire to accumulate wealth by corrupt means while in power, thus creating a further economic crisis. Predictably, the factions polarize and begin to characterize each other by reference to who they are or what they have done that has affected the other adversely. [28]   Relationally, struggles to ascend to power at all costs and to sabotage those already in power lead to the use of force and violence to achieve the desired goal.[29]   To achieve their ends, the political players have always relied on group, ethnic, religious, and sometimes military class affiliations. They seek a voice for their group, using any means possible: force, threats, moral and religious persuasion, and appeals to the sympathy of the populace in identifying with them in one way or another. As the focus and goals of the leaders and the opposition become distorted, both the leaders and their opposition lose sight of the whole frame, the succinct issue of what a nationality is in the true sense of the word. National development is lost to personal or sectional development.

B. Face-to-Face Communication Has Been Fruitful in the Worst of Scenarios

Coauthor Ezeh wonders if we may be ignoring humanity's greatest gifts (ones setting us apart from beasts) the gifts of communication and reason. Coauthor Ezeh believes that the only way out of the destructive power game is not to play it at all. He calls to change the trained incapacity of face-to-face confrontation described above, through empowering side-by-side joint problem solving throughout African communities.[30]   He believes strongly

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25. *See generally* MAKING SENSE OF INTRACTABLE ENVIRONMENTAL CONFLICTS: CONCEPTS AND CASES (Roy Lewicki et al. eds., 2003).

26. *See id.* at 31.

27. *See id.* at 21.

28. *See id.* at 23-24.

29. *See id.* at 26.

30. The power game, a dangerous psychological game of nasty tactics engaged in by most arbitrary leaders in the opinion of William Ury, has as its first victim the objectivity in the face of a conflict, which is needed to negotiate effectively. URY, *supra* note 23, at 37-39. This power game depends on your reaction to the threat or pressure from the other side. Your most powerful weapon in this circumstance is not reacting, but rather, responding by "going to the balcony," taking a dispassionate and objective bird's eye view of the problem and responding by the use of generous tit-for-tat in defusing the toxicity of nasty tactics in a conflict situation.

464

that the destiny of people depends on individual decisions and actions—that one individual can truly make a difference in social conflict. As chief legal officer for the Anglican Church Diocese of Niger state, he was able to build critical and reliable alliances that allowed him to navigate the treacherous tensions of negotiating between Muslims and Christians.[31]

Communication can be a constructive instrument that socially defines conflicts,[32] enabling parties to be positively engaged in the meaningful exchange of information and understanding.[33] Effective communication creates attentiveness among members of a group, one to another, enabling them to be willing to be influenced by the ideas of the other group members,[34] thus creating a bridge of proper perspective setting in conflicts. Improved cooperative communication helps reduce the incidence of conflict in the body polity.[35]

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31. Author Ezeh has also successfully practiced "generous tit for tat" in the face of nasty tactics. Instead of reciprocating in kind and escalating destructive conflict, he has committed to principled negotiations, gently and firmly taken care of himself in the face of attack, and nevertheless shown respect for the person of the attacker, thus, improving his relationship with the attacker. Even more importantly, he established his community profile and reputation as a person of moral integrity.

Jeffrey Sachs, an economist and author of *The End of Poverty: Economic Possibilities for Our Time*, is another contemporary example of a spokesperson promoting the negotiation strategy of generous tit for tat as key to avoiding disastrous confrontation. In traditional tit for tat strategy, a negotiator adopts the position of cooperation as long as the other negotiators do. With generous tit for tat, though, if a party begins to cheat, attack, or otherwise not cooperate, the first negotiator only stops cooperating to let the other know the consequence of non-cooperation. At the same time, the first negotiator generously forgives by not reciprocating in a nasty way. Instead, the door for cooperation is left open. The first negotiator may even generously "extend" the olive branch of renewed cooperation in the hope of enticing others to resume cooperation. *See, e.g.,* Nancy Erbe, *Game Theory, in* ENCYCLOPEDIA OF GOVERNANCE, supra note 7, at 333-34.

32. The breadth and intensity of a conflict is bound in communication. A proper understanding and use of communication skills may help salve a rather painful conflict situation and resolution process.

33. Morton Deutsch, *Cooperation and Competition, in* THE HANDBOOK OF CONFLICT RESOLUTION 22, 30 (Morton Deutsch et al. eds., 2006) (discussing how in constructive competition both the winner and the loser gain through their communication during the competition and "winners see to it that losers are better off, or at least not worse off" than at the start of the competition).

34. *Id.* at 22, 27 (listing the benefits of cooperative communication versus competitive communication as: (1) effective communication is exhibited; (2) friendliness, helpfulness, and lessened obstructiveness are expressed in the discussions; and (3) coordination of effort, division of labor, orientation to task achievement, orderliness in discussion, and high productivity are manifested in the groups).

35. *See id.* at 30.

465

As coauthor Mubanga witnessed, there are situations where these principles of communication have been applied with success, such as the South African Truth and Reconciliation Commission and the Nigerian Human Rights Violations Investigation Committee (Oputa Panel). In the Nigerian case, the reconciliation of the factions of the Ogoni four and Ogoni nine was a high point in the commission's assignment. They were able to moderate a dialogue that enabled the warring factions to sign an accord that has held up until the present time.[36] Moreover, the outcome helped empower the Ogonis who, after the peace accord, were able to speak with a more united voice.[37]

C. Widespread Empowerment of Citizenry is Critical

For the African nation to come out of its current myriad of conflict there is a need to bridge the theory practice gap in conflict and peace studies. While there are skilled conflict transformation professionals in Africa and in the international agencies working in Africa, there has been too little gain in translating their experiences into practice. The skilled professionals are usually outside the zones of conflict. Their current practice involves only coming into the zone to deal with specific conflicts. The people that need these skills are found directly within the zones of conflict, with little or no valuable skills to enable them to deal with the situations that they face daily. The few gains made in nationally and individually induced conflict resolution processes are soon lost in sectarian wrangling and power plays within the governments' systems, as well as lack of bureaucratic follow-through.

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36. *See* HUMAN RIGHTS VIOLATIONS INVESTIGATION COMMISSION, *supra* note 16, at 9.

37. In 1995, the government of Nigeria, under the military dictatorship of General Sani Abacha, executed nine young men from the Ogoni tribe of Nigeria for the alleged killing of four elders of Ogoniland. The Ogoni nine had been protesting the activities of the multinational oil companies (especially of Shell BP) on their land, the marginalization of the Ogoni people, whose land produced close to thirty-five percent of the total crude production of Nigeria, in the sharing of the revenue by the government, and also the negative and environmentally destructive procedures adopted by Shell BP in oil exploitation and production in the region. The Ogoni crisis ended with the murder of the four elders by irate youths, lopsided trial, and judicial murder of the nine by the federal government. It is instructive that full oil exploration has not been restored in the Ogoni land since the incidents. It is indeed a tragedy that could have definitely been avoided if the parties had agreed to go to a negotiation, where they would have applied all the skills relating to principled negotiation, such as reframing, listening, fight and flight control, and possible inclusion of third-party impartial structures in the process. If these skills are filtered down to the people in such conflicts who really need them, it would help in no small measure in arresting similar conflicts taking place all over the region now.

466

There is inevitably a negative emotion associated with negotiations when the negotiation is based on positional bargaining.[38] Consequently, people in conflicts have often avoided negotiations as they tax the energy of the participants.[39] If people are taught that there is an alternative, a collaborative style of bargaining that is "hard on the problem, [and] soft on the people,"[40] it will help in enabling parties to overcome their phobia of conflict resolution and management. Promoting interest-based bargaining may, in coauthor Ezeh's view, further the emergence of factors necessary for the positive socio-economic growth in Africa again.

Human rights, environmental protections, and conflict transformation policies are not achieved by accident, but through well thought out planning processes, rigorously achieved by the consistent monitoring and enforcement of laws, policies, and agreements reached after collaborative discussions aimed at such purposes. Collaborative efforts should be aimed at training people at the grassroots levels, empowering them through skills training.[41] As the saying goes, it is time to teach the people to fish rather than give the people fish when they are hungry.[42]

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38. *See* FISHER & URY, *supra* note 3, at 20 (discussing the difficulties with positional bargaining, as the relationship tends to become entangled with the problem, and relying on positional bargaining puts the relationship in conflict with the substance of the problem).

39. Again, relying on the theories of positional bargaining, if people are in conflict and believe that their negotiation will end up being a bargaining over positions, they will be reluctant to enter the negotiation for fear that the negative emotions in the relationships will taint the negotiation. *See generally*, FISHER & URY, *supra* note 3, at 20-21.

40. *Id.* at 54 (in focusing on interests instead of positions, the authors suggest instead of committing as a negotiator to a position, rather firmly commit to an interest and spend the aggressive energies there).

41. BATNA and WATNA are two examples of empowering negotiation tactics. The first is a party's empowered walk away alternative at a negotiation table and should not be confused with options, which are the possible routes parties generate and could take within the ambits of the negotiation process. *See* URY & FISHER, *supra* note 3, at 99-100. BATNA and WATNA are the alternatives to the negotiation process itself. *Id.* BATNA is the acronym for Best Alternative To a Negotiated Agreement. It is the party's bottom line that is better than the agreement proposed at the negotiation table. *Id.* WATNA on the other hand is the acronym for Worst Alternative To a Negotiated Agreement, and is a walk away alternative that is worse than a proposed negotiated agreement in a process. Parties can be empowered through encouragement to actively create "best alternatives." Awareness of BATNAs can further motivate parties to be more responsive to needs and interests and maximize assets while negotiating. *Id.* at 97-106.

42. In the Cameroon, as a result of the conflict arising between the Bafanji and Balikumbat villages, Ndi Richard Tanto and his team of Ecumenical Services for Peace (SeP) pioneered a novel process of training the parties in mediation and negotiation skills rather than mediating the problem for them. They thus created a pool of people who not only aspire to peace, but who are also are skilled in the process of achieving peace. This resulted in the achievement of lasting peace in an

467

African citizenry and professionals need special training in effectively confronting and transforming relationships with their most powerful stakeholders, including their own political leaders, governments, and most, if not all, multinational corporations (MNCs). For years, MNCs have been making huge profits from the natural resources of Africa. Beginning with human goods in the form of slavery, then agricultural produce, timber, precious metals and stones, and finally oil and gas, the economic exploitation has been considerable. When people feel the direct natural and environmental impacts of destructive MNC operations but lack the requisite communication and negotiation skills, they have resorted to using the age old method of brawn, like the Ogoni and Shell BP conflict in Nigeria[43], to express their frustrations and disaffection with long standing systemic abuses. While mobilizing has helped the African people achieve unity and brought the world's attention to their problems, it has still not advanced their critically needed economic development. Recently, Dr. Bernard Lafayette, one of Dr. Martin Luther King's colleagues in birthing the civil rights movement, has recognized this need and flown to Nigeria and South Africa to further train the citizenry in non-violent resistance for use in their struggle against outside control of African resources.[44]

As things currently stand, most of the skills required are only taught in the classrooms or conference venues, while those who need this knowledge drown in ignorance. Quoting W.B. Yeats again, ". . . The best lack all conviction, while the worst are full of passionate intensity. Surely, some revelation is at hand; Surely the Second Coming is at hand."[45] If only we can merge the best of our learning with the passionate intensity of the innocent dying in the ignorance and frustration of their lack of knowledge, then surely the second coming will be at hand, the second coming of the reign of peace in Africa, the rebirth of the land of innocence.

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area that otherwise was known for its recurring conflicts. This is similar to the process Author Ezeh is designing and implementing in Nigeria through the training of Anglican priests for the purposes of being veritable agents of grassroots peace processes and initiatives. The scheme is called the Anglican Peace Initiative. Since the priests have ministry services all over Nigeria, touching most grassroots areas of the country, their training is intended to create much needed peace ambassadors at the grassroots in Nigeria—those capable of having their thumbs on the conflict pulse of the country, thus, reducing incidents of violent conflict from erupting periodically as is constantly the case at present.

43. *See* supra note 37 (discussing conflict between Ogoni and Shell BP).

44. Richard C. Dujardin, *R.I. Students Bound for Belize*, PROVIDENCE J. BULLETIN, May 31, 2000 at 1 (noting the success of a ten day conference on "peace and non-violence in South Africa, arranged in part with Rhode Island's Bernard Lafayette.").

45. Yeats, *supra* note 19.

468

II. A REAL WORLD CASE STUDY OF EMPOWERED CONFLICT RESOLUTION AND DEMOCRATIC PEACE-BUILDING: THE CASE OF BALIKUMBAT/BAFANJI AND BAGAM/BAMENYAM CONFLICTS IN WEST CAMEROON

The conflicts between Balikumbat/Bafanji and Bagam/Bamenyam center on land. These conflicts started during the colonial period and persist due to the inability of the state to address them to the satisfaction of all parties. Multiplicities of maps define village boundaries. Each village holds tenaciously to the map that gives it a comparative advantage. The National Institute of Cartography, in trying to draw new administrative maps, most often reawakens some of the old conflicts as new administrative boundaries do not always respect the old ones. In situations of open clashes between communities, the government is reluctant to demarcate boundaries. When it does, it gives scant attention to the traditional chiefs who only have observer status in the demarcation commissions.

A. Civil Society[46] Provides Requisite Strategic Oversight Through Reflective Practice

Effective conflict resolution is not spontaneous and sporadic. It takes time to prepare with the parties in conflict and to monitor every intervention, to give feedback, and to modify strategy when the need arises.[47] Principal challenges include bringing and engaging key leaders in a long-term process, which first requires reducing mistrust and building capacities of conflicting parties so they can effectively participate in the process.[48]

As coauthor Tanto observed, before the Ecumenical Services for Peace (SeP) took the challenge to mediate the conflicts between Balikumbat/ Bafanji and Bagam/Bamenyam in 1999, sporadic attempts to mediate had been made by the government and the churches. While the intervention of the state was focused on enlisting leaders to end violence and destruction, the church appealed to their members to forgive each other and to follow the

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46. Ndi Richard Tanto is a mediator in Northwest Cameroon who has worked with the SeP for many years. Peace and Collaborative Development Network, Ndi Richard Tanto's Page, http://www.internationalpeaceandconflict.org/profile/nditanto (last visited Mar. 20, 2009).

47. The author of this section, Tanto, is describing reflective practice—the fundamental conflict technique for evaluating and ensuring case-by-case effectiveness.

48. *See* Howard Wolpe & Steve McDonald, *Democracy and Peace-building, Re-thinking the Conventional Wisdom,* 97 THE ROUND TABLE 137, 138 (2008), *available at* http://www.wilsoncenter.org/topics/docs/Democracy%20and%20Peacebuilding.pdf.

469

example of Christ. These approaches were good in that they ended the violence. They were not sustainable and democratic, however, because the interests of the parties were not identified and addressed. Furthermore, the process did not involve all the stakeholders.

SeP started its intervention with data collection and analysis of the conflicts. During the process of data collection and analysis, the major stakeholders, the interests of the parties, and the beneficiaries of the status quo were all identified. Information from this pre-mediation stage helped to shape the intervention strategy. The strategy consisted of training, creating space for dialogue, and direct mediation. It took six years of actions and reflections[49] for a sustained peace to be achieved. During these six years, many lessons were learned about the process, which can be useful in similar conflict situations in other communities and will be shared here.

B. Case-by-Case Success in Resolving Conflict Builds Necessary Community Confidence

Just as democracy depends on majority participation, conflict resolution and transformation depends on enjoying the confidence and participation of the majority.[50] In the Balikumbat/Bafanji and Bagam/Bamenyam conflicts, the purpose of the first trainings organized by the Ecumenical Service for Peace was to empower participants with knowledge of the concepts of conflict and peace[51] and nonviolent strategies in resolving conflicts.[52] The objectives were to provide participants with a forum to vent their trauma from conflict and simultaneously win their support for the process.[53] These first trainings were organized with the conflicting parties separately.[54]

At the end of these trainings in the separate communities, structures referred to as Peace Committees were formed.[55] The objectives of the Peace Committees were many, but most importantly they acted as forums for the sharing of experiences and relay units in the field for sensitization of their community members on issues of conflict and peace and resolution of conflicts within the community.[56] There were more than one Peace Committee in some communities depending on the population and the

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49. *See id.* (referencing reflective practice).
50. *See* Erbe, *The Global Popularity, supra* note 7, at 381.
51. *See generally id.*
52. *See id.* at 380-81.
53. *See id.* at 380.
54. *See id.* at 381.
55. *Id.* at 380.
56. *See* Erbe, *The Global Popularity, supra* note 7, at 380-83.

470

geographical size of the community. Bagam had five committees while Bamenyam only had one.

These committees became reflection centers, par excellence in issues of conflict resolution, and were co-opted by village chiefs to settle conflicts brought to the traditional councils for resolution.[57] Community members identified committees as structures that settled community conflicts impartially, and many community members brought their conflicts to the committees rather than the traditional councils.[58]

SeP monitored the process through monthly reports of the committees and organized field visits to discuss challenges.[59] The successes registered by the committees, in handling conflicts within and without the family, made them very popular. Many community members wanted to join them. Since membership of the committees was conditioned by participation in a workshop in conflict resolution strategies, other workshops were then organized with the support of SeP to increase the membership of the Peace Committees in each village. In the Bagam village, more than 500 people were trained, including: quarter heads, social group leaders, members of the traditional councils, and church leaders. After a year, the communities were sufficiently mobilized for peace.

C. Sustainable Conflict Resolution Depends on Equal Empowerment of the Parties and Eventually Bringing Them Together with an Inclusive Process

Adequate empowerment of all concerned was crucial to the success of the conflict resolution process described here.[60] Equal empowerment of conflicting parties, or power balancing, puts them at the same level of knowledge on issues of conflict and resolution and facilitates rational and informed discussions regarding their conflict situation.[61]

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57. *Id.* at 380.

58. *Id.*

59. *Id.* at 380-81.

60. *See* Wolpe & McDonald, *supra* note 48, at 140-41. The authors argue that there has been a missing link in the traditional approaches to peace-building. *Id.* That key link is building the capacities of key leaders to facilitate the peace process. In our effort to resolve the conflicts in West Cameroon, capacity building was a key component. *Id.* Leaders were trained to carry the process forward by analyzing the conflict and developing possible scenarios for peace.

61. *See id.* at 140-42.

471

Once parties are sufficiently empowered, they must be skillfully brought together. While the first workshops were organized for the community, the second series of workshops were organized for Peace Committee members of the conflicting communities.[62] The organization of the second workshops with conflicting parties was a serious challenge. For victims of violence who saw their property destroyed, lost dear ones, and boycotted roads and services in each other's community, to be able to come together for three to five days to attend a workshop was a major step in the process.

The focus during these second workshops was on continuing empowerment through training in mediation skills, facilitating peace-building through analysis of the conflict by the parties, and developing scenarios for resolution and mediation. This cost-benefit analysis tool proved very effective. After analyzing their conflict's impact, participants became acutely aware of what they were losing because of the conflict. This motivated them to work for resolution.

These second workshops brought together conflicting parties to reflect on their problems, to commit themselves to a peace process, and to make proposals for possible solutions.[63] This working together and analyzing their situation together helped to clear misunderstandings between them, reduce stereotypes,[64] and reestablish relations. The facilitated processes helped build a common understanding and vision for the conflict. That vision focused essentially on the future of their relationship rather than the past and its tribulations. It was during the second workshops, which took place in Balikumbat, with the participation of Balikumbat and Bafanji, that the idea of exchange visits between conflicting communities was proposed and accepted as a good strategy to rebuild relationships and communication between conflicting parties.

After this series of second workshops, the participants were sufficiently empowered to monitor and to mediate most of their conflict without assistance. SeP continued to monitor from a distance, but waited for parties to initiate consultation when difficulties arose.

D. *Exchange Visits Reestablished Relationships and Began Rebuilding Trust*

The second workshops described above stimulated large-scale mobilization for exchange visits between conflicting communities.[65] In the

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62. *See* Erbe, *The Global Popularity, supra* note 7, at 380.
63. *See id.*
64. *Id.*
65. *See id.* at 381.

472

Balikumbat and Bafanji conflict, the first visit was organized in Bafanji.[66] The Peace Committee mobilized the entire village to prepare to receive the Balikumbat people at its market square. Committees were formed to take care of the reception, feeding guests, and providing program activities during the visit. This first exchange visit brought together over 500 people. The Peace Committees presented reports of their activities, successes, challenges, and orientations for the future. The administrative authority, SeP, and the Church all made commitments to the process. The exchange visit was further characterized by singing, making sketches, and feasting. This communion of people, who were enemies for years, opened a new chapter in the peace process. Those who were initially skeptical about the outcome of the peace process joined the crusade for peace.

One of the events that marked the first exchange visit in Bafanji was the testimony of a mother, Mary Lum, who saw the nurse that helped her birth twins at the Balikumbat Health Center on the eve of the 1995 war. She gripped the nurse with tears of joy, hurried to her house, and brought out her twins who were already seven years old.

This testimony was followed by that of many others. Participants were free to talk about the war without pain, indicating that they had forgiven the past. This exchange visit marked the beginning of informal visitations between the people of the conflicting communities. Other exchange visits were organized with the same popularity.

In addition to playing a great role in mobilizing people for the peace process, the exchange visits helped rebuild broken relationships, commit community leaders and administrators to the peace process, and reestablish communication, as well as promote communal use of social services like schools, hospitals, and roads in each other's community.[67] The exchange visits further permitted SeP to evaluate the progress made by the parties and to identify issues needing attention to facilitate the process further.

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66. *See id.*

67. According to Susan Mckay and Dyan Mazurana, exchange visits bring opposing factions together to build a culture of peace based on the development of esteem and dialogue. Susan Mckay & Dyan Mazurana, *Raising Women's Voices: Peacebuilding*, International Federation of University Women, 1999, www.ifuw.org/peace/peacebuilding/raising-womens-voices.html.

473

E. Direct Mediation with Chiefs Has Been Necessary as Well as Empowered Citizenry to Move from Positions to Interests

Mediation is a very delicate balance. If the mediator is identified as taking sides with one of the parties, the process is frustrated; instead the mediator must be impartial.[68] Impartiality encompasses a lack of bias and an inclusive treatment of all voices concerned with a particular conflict, as has been described by coauthor Tanto throughout this conflict process. When done appropriately, mediation responds to the needs and interests of all stakeholders,[69] including the most marginalized and contentious, in equivalent ways, balancing power so that all have an equal opportunity to be heard.[70] In contrast, ineffectual conflict processes around the world routinely exclude one or more significant interests, often mirroring the political tactics that incite ethnic conflict.[71] Without impartiality, mediation and other conflict processes easily become pawns for powerful interests.

Mediating with leaders who hold steadfastly to their positions is a serious challenge. Working with community members has been much easier than working with their chiefs. Direct mediation is important because the interests of chiefs often differ from the interests of their populations. A chief might need political power, for example, and his people are held hostage in conflict unless ways are found to persuade the chief that serving his people's interests also secures and builds political power. The communities usually seek their interests, or underlying needs, while their leaders are prone to taking entrenched positions, seeking power rather than environments conducive to running farms without fear of destruction, as one common example.

One of the achievements of exchange visits, described earlier, was the fact that it made the chiefs, who considered themselves all-powerful, follow in the steps of their people. The chief of the Balikumbat village, Doh Gah Gwayin, who was not prepared for the peace process, discovered that his quarter heads and traditional council members were very involved in the process and had to join the bandwagon. In the Bagam/Bamenyam conflict,

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68. Erbe, *supra* note 3, at 357.

69. *Id.* at 358-60. See *id.* at 398, app., for questions to evaluate inclusivity and authentic impartiality. In one study of cross-cultural conflict process in four regions of the world, inclusive process facilitated by an open-minded and encouraging, or engaging and concerned, third-party facilitator was the top recommendation for a quality experience. *Id.* at 398.

70. *Id.* at 381.

71. *See id.* at 380-81. The external evaluation team of the International Monetary Fund ombuds mediators found that non-governmental organization watchdogs are often necessary to safeguard third-party impartiality and independence when powerful stakeholders participate. *Id.* at 386.

474

it was during an exchange visit that the chief of Bagam, Simo Tankeu Jean Marie, declared before hundreds of people from the conflicting villages that, "People can make mistakes and can repent when they are made to recognize the mistake." He made it clear that he was ready to change and to promote peace in the subdivision.

Direct mediation between the chiefs themselves has also been an important stage in the conflict resolution process in the Bagam/Bamenyam conflict. SeP facilitated several mediation efforts. SeP used the office of the Divisional Officers, who are the direct administrative heads of the chiefs, to convene the meetings. During these meetings SeP facilitated discussions. The meetings and discussions were very hostile in the beginning, with the Fon of Bamenyam refusing to take part in the entertainment after the meeting with the excuse that, "The pot is still on the fire." By this, he meant that there was still tension between the parties, making it difficult for any form of sharing to take place. During the last meeting that was held, the two chiefs accepted concessions,[72] and the chief of Bamenyam, Moko Moko Pierre, could now participate in the entertainment. He even remarked, "If you carry a basket of maize on your head and fall, you cannot recover all the grains." This was an indication that with the concessions made, the tension between the two parties had been reduced, and he was ready to share in the feasting since according to him, "The food is now ready and can be eaten."

F. Community Consensus Has Prioritized the Importance of Establishing Communal Projects for Socio-Economic Empowerment. Going Further Will Require State Collaboration

In the situation of the Balikumbat and Bafanji communities when the Peace Committee members saw that relations between them had normalized they brought up an idea to form a farmer's federation, bringing the parties together. After a series of reflections on the structure of the federation, the Balikumbat sub-divisional Integrated Farmer's Federation was formed to promote agriculture and to seek funding and markets for the members' produce. The leadership of the federation, as well as the hosting of the meetings of the federation, rotates between the two communities. This has helped to reinforce relationships and to build a common vision for the villages.

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72. This is a classic example of how extending an olive branch can work in the generous tit for tat negotiation strategy described above. *See supra* note 31 (outling tit-for-tat approach).

475

Within the last five years, the peace committees are still very vibrant in villages, peace forums that bring together peace committees are still operational, and no incidences of conflict have been reported. However, all the issues which led to the conflicts have not been addressed. The roles of the administration, the chiefs, and the elite remain major challenges.[73] Non-violent strategies have proved effective in transforming negative conflict interactions into cooperative and positive interactions,[74] but much stills needs to be done for this approach to be endorsed and supported by the government. Additionally, the government has to revisit its land tenure systems and exercise authority over land rather than leave land issues in the hands of traditional rulers. The future of peace in Africa lies in the

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73. Questions about ownership of land in Cameroon are very complex. The land tenure system designates all land in Cameroon as state land. Land is managed by the ministry of Territorial Administration through its decentralized structures. The closest administrator of land to the population is the Divisional Officer popularly called "*Chef Terre*," or "the Leader in charge of land." He works closely with village chiefs, referred to as Axillaries, of the administration in the management of the land. By law, there is a hierarchy of power from the Minister of Territorial Administration to the village chief. While the first three categories of actors—Minister, Senior Divisional Officer, and Divisional Officer—have the authority to use their power to demarcate land, the chiefs have only consultative powers.

The situation described above is what happens in principle. In practice, however, the chiefs are the real owners of the land and can go as far as waging a war on whoever threatens their authority over land. All of the conflicts that have occurred in Western Cameroon within the last fifteen years have been over land, due to the chiefs' disregard for state authority. The Balikumbat/Bafanji, Bagam/Bamenyam, Bali/Bawock, and Mbessa Oku conflicts are all due to the insubordination of traditional chiefs to constituted authority. In the Oku/Mbessa conflict, for example, the state planted pillars to demarcate the land, and the chief of Oku ordered the pillars to be removed. In the Bali/Bawock conflict, the administrative authority of Mezam wanted to solve the problem by demarcating the frontier between the two villages. The Second Assistant, SDO Muma Charles, who went to the field to examine the possibilities for the demarcation, was chased from the area on the instructions of the chief of Bali, Fon Galega. The Bali people went as far as taking the senior administrator to court for infringing on his land.

Insubordination can be understood against the background of the democratic practice in Cameroon. Democracy in Cameroon means rule of the majority at all costs. For that reason, political parties, in their struggle to win political power or stay in power, put in place mechanisms to ensure a majority vote at all costs in every election. Village chiefs have therefore been hotly sought by political parties because they have the power to mobilize and influence their subjects at the local level to vote for one party or the other.

Victory in an election could well be as a result of the ability of a political party to win the support of the village chiefs. As such, these chiefs stand in a vantage point to bargain for facilities from political parties, and the party that wins, due to their support, gives them a free hand in issues of land as compensation for votes. That was the case with the Balikumbat/Bafanji conflict, wherein Fon Doh Gah Gwayin rigged elections, secured the only CPDM party seat of the twenty seats in parliament for the North West Province, and invaded Bafanji, which largely voted for the opposition SDF party.

74. *See* Erbe, *The Global Popularity, supra* note 7, at 382.

476

recognition of the role of the civil society in conflict transformation and the collaboration of the state.

III. VICTIM-OFFENDER MEDIATION, OR THE BEST OF TRUTH AND RECONCILIATION, CAN IMMEDIATELY HELP WITH INTRA-TRIBAL AND INTERTRIBAL CONFLICT IN KENYA AS WELL AS EMPOWER JUSTICE IN THE FORM OF ECONOMIC AND OTHER CRITICAL DEVELOPMENT

As a Kenyan theologian, Reverend Karanja[75] has a vision for restorative justice in Kenya. Specifically he envisions a truth and reconciliation commission mirroring the South African experience and incorporating integrative negotiation as well as victim-offender mediation, utilizing lessons learned from similar commissions as resources. He has assessed truth and reconciliation as the best way to deal with atrocities committed by British colonialists against the Gikuyu people in Kenya, and the resultant intra-group and intertribal tensions within the third and fourth generations, for all concerned.[76] Pastor Karanja sees truth and reconciliation as

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75. Daniel Karanja is a theologian from Kenya who has published works on oppressive tribal and cultural practices like female genital mutilation and the needs of women living in communities of oppression. He is currently engaged in developing a faith-based conflict resolution curriculum for Kenya—laying the foundation for truth and reconciliation, first within his own community.
Charles O. Lerche III offers this definition of reconciliation:
> Reconciliation is currently essential to the construction of sustainable peace. It can be defined as a profound process of dialogue between conflicting parties, leading to the recognition of the "*other,*" and respect for his or her differences, interests, and values.
> Reconciliation is 'the action of restoring broken relations'. . . .
> [It is] the acknowledgment of the dignity of victims long ignored. It restores the individual's capacity to take hold of herself and to manage the future and herself in that future. It restores the capacity to live with or alongside the other. It allows us, while remembering, to bring closure to a chapter in our past. It enables us to live in the present, making our life as a nation and our lives as individuals in a shared future. It always remains a never-ending process.

Charles O. Lerche III, *Truth Commissions and National Reconciliation: Some Reflections on Theory and Practice,*7 PEACE & CONFLICTS STUDIES 3 (2000), *available at* http://shss.nova.edu/pcs/journalsPDF/V7N1.pdf#page=2 (internal citations omitted).

76. For one of the best-detailed historical accounts of the British atrocities in Kenya, see Caroline Elkins' award winning book entitled, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya. See generally* CAROLINE ELKINS, IMPERIAL RECKONING: THE UNTOLD STORY OF BRITAIN'S GULAG IN KENYA (2006). In 2006, Elkins was awarded the Pulitzer Prize for General Non-Fiction for her work in Kenya. *See generally id.* She eloquently detailed how the British imperialists mistreated the Gikuyu people of Central Kenya. *Id.* She is currently working at Harvard University as an associate professor in history in the Kennedy School of Government. Her focus is human rights issues.

477

providing an "appropriate forum to process deeply hidden anger to prevent future violent retaliation."[77] Like attorney Ezeh, Pastor Karanja encourages working with stakeholders to realistically assess their BATNAs.[78] Violence can be prevented if parties are empowered by being made aware of their BATNA early enough before the conflict explodes to uncontrollable proportions and encouraged to create even stronger, more desirable, alternatives if at all possible.

A. Kenya's Conflict

In December 2007, Kenya held a fiercely contested general election followed by unbelievable intertribal violence.[79] Intense negotiations, led by former U.N. Secretary General Kofi Annan and backed up by international pressure, saved the country from disintegrating into the likes of the Rwandan genocide.[80] The post-election violence was just the tip of a hidden iceberg of unfair, postcolonial land ownership policies; tribalism based political and economic control of resources; and escalating intertribal, campaign rhetoric rivalry between the political camps.[81] The President appointed a commission of inquiry headed by a former South African judge and the team

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77. DANIEL KARANJA, FINAL PORTFOLIO (2008).

78. See *supra* note 41, for discussion of BATNAs.

79. *See* Associated Press, *At Least 94 killed in Kenya Election Protests*, INT'L HERALD TRIB., Dec. 31, 2007, *available at* http://www.iht.com/articles/ap/2007/12/31/africa/AF-POL-Kenya-Elections.php.

80. AlJazeera.net, *Kenyan Leader Signs Power-Share Law*, http://english.aljazeera.net/news/africa/2008/03/200852514721316663.html (last visited Mar. 20, 2009). Kofi Annan, former U.N. Secretary General, successfully negotiated a power sharing deal between the current Kenyan President and the then opponent who is now the Prime Minister under the new agreement. *Id.* The ability to discern the immediate and long term interests of the parties, plus the rising violence and destruction of life and property, resulted in high stakes. *See* Associated Press, *Kofi Annan Takes Over Kenya Mediation*, CBSNEWS.COM, Jan. 10, 2008, http://www.cbsnews.com/stories/2008/01/10/world/main3695650.shtml. The Kenyan public seemed quite comfortable with Annan's team of qualified and experienced expert negotiators. Unfortunately, the root causes of these post-election violent acts are yet to be addressed and hence the urgent need for a full fledged truth and reconciliation commission. MICHELLE D. GAVIN, ADJUNCT FELLOW FOR AFRICA, COUNCIL ON FOREIGN RELATIONS PRESS, POLICY OPTIONS PAPER—KENYA (2008), http://www.cfr.org/content/publications/attachments/Kenya_POP.pdf.

81. Njoki S. Ndungo, *Kenya: The December 2007 Election Crisis*, MEDITERRANEAN Q., Fall 2007, at 113, *available at* http://mq.dukejournals.org/cgi/reprint/19/4/111.pdf. Ndungo states that:

> The simmering anger was the result of a combination of historical injustices from the time of Kenya's colonial past and the failure of successive governments . . . to address the problems of the inequality of its citizens.
>
> Inequality is seen in landlessness, gender status, youth unemployment, the widening gap between extremely wealthy and extremely poor citizens, and the marginalization of some ethnic communities.

Id.

478

has been conducting open fact finding hearings across Kenya.[82] The commission's report concluded that overall the votes were not stolen in favor of one side; however, negative, civil society activism through the mass media planted the first seeds of violence. Civil society members prior to the elections alleged that the government had already planned to steal the elections and had planned *official* violence to cover up their sinister motives. The debate of whether these conclusions are trustworthy continues. With such a questionable ethical stance, the civil society has some work to do to prove its integrity to all. Unfortunately, the truth and justice reconciliation process promised during the negotiations has not yet been formed.[83] Fighting politicians formed a government of national unity to protect their selfish interests while the masses wallow in despair, disease, poverty, and remain estranged from the very government their parents and family members died for. There are still some internally displaced people (IDPs) eight months after the chaos ended.[84] The seeds of suspicion and mistrust planted during the period of violence can only be uprooted by a long-term process of direct engagement between the affected tribes, and by addressing the root causes of intertribal mistrust and violence.[85] Leaders must be challenged to persuade their followers before, during, and after the elections, that no one wins in violent conflict.

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82. *See* Dave Opiyo, *Kenya: South African Judge to Lead Polls Inquiry Arrives*, DAILY NATION, Mar. 20, 2008, *available at* http://allafrica.com/stories/200803200075.html.

83. The recommended bill for a TRC appeared before parliament in a forty-two page draft and had a very focused mission statement if only there was political will to follow. *See* RescueKenya.org, Draft Truth, Justice, and Reconciliation Bill - TJRC Draft Bill, http://rescuekenya.wordpress.com/2008/04/24/draft-truth-justice-and-reconciliation-bill-tjrc-draft-bill/ (last visited Mar. 20, 2009). Unless faith-based communities take charge of this issue in an united interfaith approach, the TRC will likely remain where it is right now. The mission stated, "AN ACT of Parliament to establish a Commission to seek and promote justice, national unity, reconciliation and peace among the people of Kenya by inquiring into the human rights violations in Kenya and recommending appropriate redress . . . ." *Id.*

84. International Committee of the Red Cross, *Kenya: Red Cross Counselors Provide Needed Help for the Displaced*, Jan. 23, 2008, http://www.icrc.org/Web/Eng/siteeng0.nsf/html/kenya-feature-230108.

85. Ideally, present day generations of former British perpetrators will be moved by Gikuyu stories; feeling empathy and a genuine desire to make amends.

479

B. A Vision for Truth and Reconciliation Beginning with Intra-tribal Tensions

Pastor Karanja plans to first educate and rally clergy to build the capacity for negotiations from within before seeking regional and international support.[86]   Indigenous, traditional methods of negotiation[87] provide foundational support.   Once a Kenyan Truth Reconciliation Commission (TRC) is convened, it will begin by addressing intra-group conflicts resulting from Britain's divide and rule policies.   Colonial related wounds that have never been addressed must be the starting points in order to acknowledge the immense nature of tribal based bias and prejudice that leads to generational violence.   Face-to-face negotiations are encouraged between the Gikuyu and loyalist Gikuyus and other tribes.   The Gikuyu believe that they bore the heaviest burden in leading the Mau Mau war against Britain and assume a sense of entitlement and privilege ahead of the loyalist Gikuyus and other tribes.   Other tribes do not take this assumption lightly and hence dislike Gikuyu domination in the country.

Pastor Karanja stresses the importance of impartial and sincere dialogue where pain is acknowledged and heard, and losses are deeply honored. Victims need a safe place to tell their stories, grieve their losses, and hear offenders take responsibility for the harm they have committed for healing to

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86.   Faith-based communities have both grassroots, regional, and national networks in place. For example, the Anglican Church of Kenya has an established justice and peace department including a research unit which has published on problem solving. The Catholic Church of Kenya too has a robust justice and peace unit staffed by professional experts familiar with local, national, and international issues. Building liaison with these and other inter-faith networked organizations will add to the efforts going on in Kenya.

87.   Josiah Osamba, *Peace Building and Transformation from Below: Indigenous Approaches to Conflict Resolution and Reconciliation Among the Pastoral Societies in the Borderlands of Eastern Africa*, 2 AFR. CTR. FOR THE CONSTRUCTIVE RESOL. OF DISP. 33, 42 (2001), *available at* http://www.accord.org.za/downloads/ajcr/ajcr_2001_1.pdf (Mr. Osamba is a lecturer in the Department of History at Egerton University, Njoro, Kenya, studying towards a Ph.D. in Dispute Resolution as a Fulbright Junior Scholar at Nova Southeastern University, Fort Lauderdale, Florida). There are known African methods of reconciliation and healing that could immensely help in this process. *Id.* Cultural awareness of tribal and ethnic underlying interests cannot be ignored if conflicts are to be resolved. *Id.* The role of formally recognized elders and their time tested expertise in bringing two warring sides together especially among pastoralists competing for dwindling water and grazing areas must be embraced. *Id.* My father was our village chief. Every Monday he gathered with recognized elders to hear grievances from various parties and to decide accountability and punishment. This system worked since the village concept of justice recognized that the complainant and the offender belong to the village before and after the punishment. Rehabilitation was deeply ingrained in this village judicial process. John Mbiti, an African philosopher, explains the necessity of communal understanding even in conflict resolution: "[I] am because we are . . . because we are therefore I am." *Id.* Parties understand that life is intricately held together and interlinked between families, villages, and regions and hence conflicts must be resolved through the involvement of the entire community. *See id.*

480

commence.[88] Ideally, new perspectives form. Perhaps the victim is able to see the perpetrator as vulnerable and in need of care and compassion for the first time. Optimally, individual and group identities are transformed through redemption.[89] While care must be taken not to rush the process of forgiveness, parties would do well to remember the words of Archbishop Tutu: "Without forgiveness, there is no future."[90]

One conflict resolution tool necessary for creating the safe space described above is the inclusive selection of impartial facilitators, investigators, and mediators for the truth and reconciliation process so that all concerned are satisfied and willing to proceed with some degree of trust.[91] Pastor Karanja is satisfied with the approach South Africa took here, convening a qualified panel of commissioners who openly shared the process and resultant information with their publics.[92]

Another conflict resolution tool Pastor Karanja recommends for creating the safe space described above is negotiation of process parameters, or ground rules, such as respect for others and detailed responses to anticipated outbursts of anger.[93] Ground rules are process principles and boundaries agreed to by parties involved in a conflict process.[94] They can be negotiated to effectively respond to angry outbursts and other conflict escalation.[95] They can also craft a uniquely effective multicultural process.[96]

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88. *See* Elizabeth M. Evenson, *Truth and Justice in Sierra Leone: Coordination Between Commission and Court*, 104 COLUM. L. REV. 730, 737 (2004).

89. *See* Richard Stengel, *Mandela: His 8 Lessons of Leadership*, TIME, July 9, 2008, *available at* http://www.time.com/time/world/article/0,8599,1821467,00.html. Rule 5 states, "Keep your friends close—and your rivals even closer." *Id.* Mandela truly expressed care for his enemies. *Id.* He invited them to social events, called them during their birthdays, and attended family funerals. *Id.* Building trust must be the foundation that will quell strong feelings of revenge. *See id.* (Rule 4, "[k]now your enemy—and learn his favorite sport", describes how Mandela came to understand Afrikaner's by learning their language and helping imprisoned ones as an attorney). In violence there is no winner; all sides lose. Learning as much as possible about the other side, likes, dislikes, and favorite routines, can move relationships to new and healthy levels where the communication barrier is broken. *See id.* All the eight rules will be listed towards the conclusion of this section.

90. Archbishop Desmond Tutu, *Foreword: Without Forgiveness There is no Future, in* EXPLORING FORGIVENESS xiii (Robert D. Enright & Joanna North eds., 1998).

91. *See supra* p. 4 (describing the inclusive selective process).

92. *See* Erbe, *supra* note 3, at 407-10 (an example of another authentically impartial panel with suggestions for creation).

93. NANCY ERBE, HOLDING THESE TRUTHS: EMPOWERMENT AND RECOGNITION IN ACTION 166 (2003).

94. *See id.*

95. *Id.* at 166-71.

96. *See* Erbe, *supra* note 3, at 403.

481

The preparation process of all key participants will be critical to the success of the TRC. For example, understanding Mandela's eight secrets of leadership[97] will empower the participants as well as motivate a win-win outcome. This conversation is necessary as all sides dig deeper to slowly rebuild trust through small agreements that genuinely address the needs of those present, followed by the consistent implementation needed to demonstrate trustworthiness.[98] After shared acknowledgment of victimhood (underlying their intra-group conflict) and trust-building, the Gikuyu people would then begin exploring the victim-offender mediation process.

Traumatized, angry victims who are intent on revenge and punishment for their perpetrators need an opportunity to examine and to evaluate which options are realistically available to them.[99] If they consequently determine that a meeting with their offender is of value to them, they are then able to negotiate on behalf of their needs and interests.[100] An offender may agree to responsibility for the harm caused, even some form of punishment, or offer to repair physical, emotional, and psychological harm in ways that are unexpectedly attractive and healing to victims.[101]

C. Repair of Harm Must Prioritize Community Development

Pastor Karanja further elaborates his thoughts about the lessons learned from South Africa's experience and other more recent truth and reconciliations. Most importantly, he promotes community, rather than individual, reparations—repairing harm in ways that advance the educational

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97. *See* Stengel, *supra* note 89. The article stated the following eight lessons of leadership from President Nelson Mandela during an interview marking his 90th birthday celebration: (1) "Courage is not the absence of fear - it's inspiring others to move beyond it;" (2) "Lead from the front - but don't leave your base behind;" (3) "Lead from the back - and let others believe they are in front;" (4) "Know your enemy - and learn about his favorite sport;" (5) "Keep your friends close - and your rivals even closer;" (6) "Appearance matters - and remember to smile;" (7) "Nothing is black or white;" and (8) "Quitting is leading too." *Id.* These enduring principles of leadership especially at the negotiation table will eliminate positional and inefficient negotiation ushering integrative win-win outcomes for all. *See id.*

98. *See* Erbe, *supra* note 3, at 408 (discussing how un-kept promises and lack of transparency erode trust).

99. *See* FISHER & URY, *supra* note 3.

100. *See id.*

101. *See id.* Making amends will benefit by applying the four principles of negotiation offered by Fisher and Ury: (1) separate the people from the problem; (2) focus on interests rather than positions; (3) generate a variety of options before settling on an agreement; and (4) insist that the agreement be based on objective criteria. *Id.* at 18, 40. Such a sense of balance and fairness between third and fourth generations who did not directly engage in this conflict provides an optimal environment to address sensitive matters with an objective and solution focused manner. Cross-cultural intelligence will be an added advantage when these two sides gather.

482

and economic status of the communities injured, thus, avoiding complex disputes and on going tensions over amounts of individual reparations.[102] He is quite critical of how Western perpetrators, often co-conspirators and beneficiaries of international crimes, have not been held accountable for repairing the harm.[103] He also hopes to avoid a small elite group of well connected Gikuyu people benefiting to the detriment of many, which happened in Kenya following independence. In Kenya, families of former Gikuyu colonial loyalist politicians, who were supporting the colonialists, carved out thousands of acres of land at the expense of the majority—poor Mau Mau warriors and their families who had fought for independence. A recent report on development assistance aimed at ending ethnic conflicts found that while there are no formulas for resolving ethnic conflict, the natives must be engaged fully in deciding what they consider fair and equal distribution of resources.[104] Identifying mutual interests and building consensus will go a long way in building sustainable community.

D. Learning From and Building On Past Truth and Reconciliation

The unanswered question to be explored is how to avoid re-traumatizing victims during the TRC process. Employing the skills of professional pastoral caregivers during the TRC process could provide the emotional and psychological counseling necessary, which was absent during the South African TRC.

Pastor Karanja is further searching for ways to avoid a repeat of the isolation and harassment that occurred to women who participated in Rwanda's Gacaca courts when they came forward to testify against their perpetrators. All participants could be requested to sign an agreement

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102. *See* Milton J. Esman, *Can Foreign Aid Moderate Ethnic Conflict?*, PEACEWORKS, Mar. 1997, http://www.usip.org/pubs/peaceworks/pwks13.pdf.

103. For example, a 2002 lawsuit accused several corporations and banks of aiding and abetting South Africa's apartheid government. *See* Erbe, *supra* note 3, at 394.

104. David R. Smock, *Humanitarian Assistance and Conflict in Africa*, PEACEWORKS, Feb. 1996, http://www.usip.org/pubs/peaceworks/pwks6.pdf. Smock convincingly argues that the empowerment of local institutions must be prioritized in capacity building. *Id.* Local authorities and distribution infrastructures under reasonable accountability and supervision can get the job done. Some foreign donors' "Santa Clause" mentality, where they magically drop from nowhere to "administer aid" and then disappear, destroys these communities more than they help salvage them over time. Oxfam international has been successful in this area and others would do well emulating Oxfam.

483

guaranteeing the safety of all participants and freedom from all forms of intimidation before, during, and after the process.

E. Civil and Faith Based Communities Must Hold Government Accountable For Transformation of Relationships

The situation in Kenya is similar to what has been described by the other coauthors of this article regarding their governments. There, the government of Kenya is likewise a tough stakeholder. Kenya's past track record with commissions of any kind is foggy and shrouded with secrecy. Unless faith-based communities and civil society members take full responsibility and hold the government accountable, this TRC process will be just another empty drill without meaningful results.[105] The lessons learned from South Africa are vital and should be considered each step of the way in order for the Kenyan process to succeed. Reconciliation must move past the mechanics of conflict resolution and literally focus on healing and repairing broken relationships. Understanding the wounds of each participant, as well as the shared desire for wholeness and restoration, could overcome all barriers and roadblocks of self-interest. The chapter of violence, death, and destruction may never be permanently closed, but this process will provide a new vocabulary for telling the story to succeeding generations in a way that will hopefully prevent future fractures from occurring and taking these communities through the same cycle of violence over and over again.

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105. A similar warning was issued by Ndungu Wainaina, the Director of the International Centre for Policy and Conflict, which is a member of the Kenyans for Peace with Truth and Justice Coalition. Ndungu Wainaina, *What Citizens Should Expect from a Truth Commission*, THE DAILY NATION KENYA, May 17, 2008.

> [V]igilance, after TJRC submits its reports, is critical, given the fact that previous commissions have not addressed issues of impunity. Many such are still gathering dust in government offices. How do you compel the government to ensure that the recommendations are followed to the letter? How do you ensure that victims get justice? There are major questions and skepticism towards the roles of TJRCs in meeting their goals. Huge differences in understanding and expectations of the process exist between the elites and the communities. TJRCs across the world are notorious in their failure to implement their recommendations. This has led to rare attainment of the expected moral regeneration of the society. The ethnic and political divisions look even more set to make the work of TJRC more difficult in Kenya. The government and its agencies as well as the citizens must behave in a manner to further the ideals of such a process. However, as long as previous injustices continue being replicated in Kenya, such as the gross human rights violations like extra-judicial killings and torture, then TJRC may not succeed. It would easily turn into another conflict resolution mechanism. The truth-seeking process is unfinished business that provides a foundation for the transformation of the state. It is only a step in the process of addressing long term and short term issues.

Id.

484

IV. REINTEGRATING CHILD SOLDIERS THROUGH ENGAGING COMMUNITIES IN VICTIM-OFFENDER MEDIATION THAT EMBRACES INDIGENOUS AFRICAN TRADITION

In coauthor Neba Mbonifor's[106] experience, one of the greatest challenges in post-war recovery and reconstruction is effectively rehabilitating and reintegrating former child soldiers into productive sectors of society. Since the end of Liberia's civil war in 1998, both local and international NGOs have been running a series of programs to rehabilitate thousands of former child combatants. Scholars describe and evaluate their work as combining family reunification, access to education, skill training, health service, and psychological recovery.[107] Family and community mediation have been instrumental to these rehabilitation and reintegration efforts,[108] bringing whole families, traditional authorities, and the church into the rehabilitation process. While much has been achieved through these processes, there is an overall feeling that progress has been slow.[109]

Research concluding that inadequate social institutions hinder reintegration of child soldiers mirrors the condition initially attributed as responsible for child soldiers: lack of political will on the part of regional governments and the international community to enforce and respect legal instruments governing the involvement of non-combatants, especially children in warfare. International legislation regulates the protection of children in conflicts.[110] Yet, law alone has not been enough to prevent the involvement of children in war in the face of present day trends in weapon manufacture.[111] Modern weapons are light to carry and are easily operated by children as young as ten years old.[112] Children with little or no education, poor economic backgrounds, and broken homes are the most

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106. Coauthor Neba Mbonifor is one of coauthor Ndi Richard Tanto's neighbors and colleagues, a historian, teacher, and community activist.

107. *See* Susan Shepler, *The Rites of the Child: Global Discourses of Youth and Reintegrating Child Soldiers in Sierra Leone*, 4 J. OF HUMAN RIGHTS 197-211 (2005); *see generally* Frank Faulkner, *Kindergarten Killers: Mortality, Murder and the Child Soldier Problem*, 22 THIRD WORLD Q, 491-504 (2001).

108. *See* Faulkner, *supra* note 107, at 500; *see* Shepler, *supra* note 107.

109. Voker Druba, *The Problem of Child Soldiers*, 48 INT'L REV. EDUC. 271, 271-77 (2002) (concluding that rehabilitation and reintegration are greatly hampered by lack of funds, and inadequate personnel and social institutions).

110. Faulkner, *supra* note 107, at 492.

111. *Id.* at 495.

112. *Id.*

485

vulnerable to forceful enlistment, especially those children who are refugees.[113] These same children struggle with rehabilitation.

Yet, once again, as stressed repeatedly by earlier coauthors, African communities have informal options for addressing their needs that can be exercised while waiting for and working on the strengthening of social institutions. This is particularly true when discussing the reintegration of offenders into their families or broader communities (when viable families no longer exist).[114]

A. Victim-Offender Mediation Embraces Long Standing African Conflict Practice

Coauthor Mbonifor concurs with scholars who attribute the slow pace of rehabilitation to an overemphasis on economic rather than psychological recovery.[115] He believes that while providing livelihood for these children is indispensable, repairing their "damaged self" can do more for effective reintegration. He proposes that victim-offender mediation, incorporating African restorative traditions, be added to the family and community mediation processes currently is use. Coauthor Mbonifor sees the contemporary restorative justice processes of victim-offender encounters, public forgiveness, restitution, community service, and truth and reconciliation as ripe for blending with native African forms of restitution, forgiveness, and ritualistic cleansing.

Restitution and public forms of forgiveness are not new to most traditional African communities.[116] The only new thing being promoted here is that these forms of restoration be used with child soldiers. Traditional societies have reserved these methods for notorious adult criminals, like murderers, thieves, adulterers, sorcerers and others, who have terribly gone against public norms and then sought repentance and forgiveness from their societies.

It is important to first explain the relevance, process, and consequence of the traditional form of public repentance, forgiveness, and restitution in the form of community service within an African context. African offenders are expected to actively seek forgiveness and restitution. They are strongly motivated to do so because they understand the consequences that will befall

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113. *Id.* at 496.

114. *Id.* at 500. The challenge of refugee children is more complex. *Id.*

115. *See* Faulkner, *supra* note 107.

116. *See, e.g.,* John Dugard, *Reconciliation and Justice: The South African Experience,* 8 TRANSNAT'L L. & CONTEMP. PROBS. 277, 310 (1998) (discussing restitution and public forgiveness in South Africa).

486

them should they choose to stay in the community with the blood of innocent people on their hands. It is safer and cheaper to offer to do community service than to wait and be ostracized or exiled from their communities. Even in moderate cases, no one will marry from a family whose father, mother, or sibling had once spilled human blood or been involved in a crime of similar magnitude.

In most of North West Cameroon, traditional and ritualistic ceremonies are organized mostly in public squares where whole families and communities turn out to witness the purification and readmission of previously "bad birds" of the society. At these events, all family members are cleansed from the humiliation brought by the evil acts of their loved ones. Most important to understand is the community-centered approach. The collective system in most African traditional societies stipulates that though crime may be the direct blame of the individual offender, the community within which the offender was born and nurtured shares in the complexity of the offense. Consequently, child-soldiering is a crime against the entire community by an important segment of the same community.

The offending and offended community can even go beyond the family. Just like other traditional systems in many parts of the world, traditions in North West Cameroon revere children as the collective wealth and even the engine of society. In return, teenagers are expected to give the same respect to neighboring parents or seniors as they would accord to their own parents. This same reverence further means that a juvenile offender not only humiliates the offender's immediate family, but also the offender's neighbors and entire community.

This African belief is distinct from the conclusion of some pro-children's rights authors who largely attribute child-soldiering to failed societal responsibility.[117] Western scholars generally see young ex-combatants as victims of neglect by their families and societies.[118] The African family system belief, however, is that children are supposed to be good, respectful, and hardworking. There is no justification for crime, no matter the circumstances. Thus, irresponsibility—like choosing to fight in war and to kill—must be forgiven for children to be accepted back by their families and society in general. Even if the Western and international worlds do not agree with giving children the blame for infant soldiering, understanding the African perspective helps in understanding the importance

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117. *See, e.g.,* Shepler, *supra* note 107.
118. *Id.*

487

of giving the children the opportunity to regain their lost image of goodness by offering to pay a price for it, appearing in public and doing community service.

At the same time, children's families, immediate and extended, share in some degree of culpability. Thus, they too, must be prepared to seek forgiveness and make amends. Including these traditions in current efforts at mediation would likely facilitate integration of child soldiers.

V. NEGOTIATING AND MEDIATING AFRICA'S DEBT CRISIS

Most of the world now understands that Africa's debt and health crises have escalated to breaking points.[119] Out of the forty-one heavily indebted poor countries in the world thirty-three are in Africa.[120] Many African countries are paying more for debts than for health care and other essential domestic services.[121] On average, African countries are spending eight times more repaying foreign debts than funding domestic social services.[122] For every one dollar poor African countries get in grant aid, they pay back fifteen dollars on debts.[123]

In response, coauthor Mubanga hopes to use his negotiation and mediation skills and personal knowledge to persuade international leaders and lenders to consider several options for debt relief rather than simply insist on current requisite conditions.[124] The options he promotes here include: (1) a bankruptcy like option for African countries; (2) tracing and

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119. JEFFREY D. SACHS, THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME 81-84, 203-04 (2005) (describing how development aid has fallen in the last decade as diseases like AIDS and malaria have been endemic and how the IMF and World Bank have failed Africa).

120. STEWART FRANCES, LALL SANJAYA & WANGWE SAMUEL, DEAD END TO DEVELOPMENT: ALTERNATIVE DEVELOPMENT STRATEGIES (2003).

121. S. Adepoju & R. Stewart, AFRICAN STUDY REVIEW 103-74 (2001). George Mubanga is a journalist and radio commentator from Zambia who helped lay the foundation for South Africa's Truth and Reconciliation process through quietly meeting with communities and persuading their participation.

Africans living in Africa have benefited a lot from programs designed by organizations and countries in the Western world which are aimed at improving the standard of living. This is very critical to planting the necessary seeds for building cultures of peace. For example, volunteers from Scandinavian countries, the United States, and Japan are playing a critical role helping millions of disadvantaged Africans and orphans who have lost their parents from AIDS.

122. *Id.*

123. Paul Vallely, *Gleneagles Did Succeed*, NEW STATESMAN, July 3, 2006, at 4-26.

124. Economist Sachs, like authors George Mubanga here and Ndi Richard Tanto earlier, promotes a clinical, or case-by-case, diagnostic evaluative approach, exemplified by conflict resolution's reflective practice, rather than a "one size fits all" approach to financial recovery. SACHS, *supra* note 119, at 83-84; *see also id.* at 101 (describing his negotiation of Bolivia's debt cancellation agreement, which became a template for debt cancellation).

488

freezing the accounts of corrupt African leaders outside of Africa by the Group of Eight (G8), International Monetary Fund (IMF), Paris Club, and World Bank when these accounts contain loan money stolen from African people; and (3) flexibility in the conditions that poor countries in Africa must meet to qualify for debt relief, including the waiver of conditions under certain circumstances.[125]

A. Mediating a Bankruptcy-Like Approach

Living in the U.S. has given coauthor Mubanga an opportunity to observe big companies in the U.S. survive total collapse by filing for bankruptcy. To be eligible to file, companies must first reach a critical stage, similar to the one seen in Africa, accumulating overwhelming debts. A considerable number of American companies learn from their mistakes and do very well after reorganizing themselves under the protection of bankruptcy law. Coauthor Mubanga is not a lawyer. He envisions, however, that African leaders might make it clear that they have reached bankruptcy-like status and are prepared to negotiate debt repayment.[126] This is similar to the beginning of Columbia economist Jeffrey Sachs' work with countries like Bolivia, countries at the point of bankruptcy.[127]

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125. Journalist Mubanga plans to use conflict cost-risk-benefit analysis to explore the dire need for these options in a documentary film.

126. Author Mubanga would appreciate hearing from bankruptcy lawyers concerned with the African debt crisis who could educate him about contemporary bankruptcy law and proceedings and help him explore possible correlations and avenues for African countries. He is particularly interested in learning more about Chapter 15, which incorporates the Model Law on cross-border bankruptcy drafted by the United Nations Commission on International Trade Law (UNCITRAL) in 1997. 11 U.S.C. § 1501 (2008). The law allows U.S. courts/judges to issue subpoenas (orders) as circumstances dictate on bankruptcy proceedings that involve foreign countries. *Id.* The main consideration of U.S. courts and judges when handling cases of this nature depends on whether the conduct of a creditor or debtor violates laws of public policy in the United States and does not conform to basic rules of procedural fairness. *See* 11 U.S.C. § 1506.

127. SACHS, *supra* note 119, at 90-92. He had studied the Great Depression and mechanisms to help "extricate countries from bankruptcy." *Id.* at 90. He currently acts as an impartial, trusted outside advisor to many countries in such crisis. *See* The Earth Institute at Columbia University, Full Bio: Prof. Jeffrey D. Sachs, http://www.earth.columbia.edu/articles/view/1770 (last visited Mar. 20, 2009).

489

B. Negotiating Help in Effectively Tracing Funds Stolen By Corrupt African Leaders

Another issue ripe for negotiation with lenders would be support for effectively tracing funds that have been absconded by corrupt African leaders.[128] Most of the money loaned to African countries, a reported $140 billion since independence, has been taken by such leaders and hidden in foreign accounts.[129] Those who hide their money abroad are given impunity. For example, for over two hundred years, Switzerland has not allowed the disclosure of banker information, providing an ideal location to conceal funds.[130]

Despite obstacles, as coauthor Mubanga has observed, African governments are finding creative approaches to trace such funds which promise some success. Support from international lenders would likely heighten progress here. For example, the Kenyan government led by President Kibaki, who succeeded Arap Moi, hired an American company, Kroll of New York, to trace these funds. To date, the company has made shocking revelations and forced many high ranking judges to resign.

Once corrupt leaders die, money is even harder to trace.[131] Mobutu Seseseko, the former president of Zaire, which is now the Congo Democratic Republic (DRC), is an African leader who absconded billions of dollars in foreign accounts. After his death, the government of DRC failed to trace the funds.[132] Likewise, Sani Abacha, the former President of Nigeria, took billions of dollars that he kept in separate accounts abroad. When he died in office in 1998, the Nigerian government initially could not trace the money. Yet, amazingly, after constant pressure from the new president, Olusegun Obasanjo, Switzerland returned $1 billion of the stolen money to Nigeria.

C. Mediating and Negotiating Options to the Debt Crisis that Truly Work

As mentioned earlier, excessive reliance on outside experts who attempt to act for the parties rather than empower the parties to act on their own behalf has not worked.[133] This is typical of what is happening in Africa. Instead of negotiating mutually beneficial ways to resolve the debt crisis

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128. SACHS, *supra* note 119, at 190-209 (emphasizing that corruption is only one of many complex variables responsible for Africa's deep poverty).

129. M. Lancet, *Making Healthy a G8 Priority*, SPOTLIGHT ON AFRICA 311-29 (2005).

130. Adepoju & Stewart, *supra* note 121.

131. Lancet, *supra* note 129.

132. Adepoju & Stewart, *supra* note 121.

133. *See supra* note 3 and accompanying text.

490

with African leaders,[134] the World Bank and the IMF set up the standards to be followed. The World Bank and the IMF, for example, implemented a policy that cancelled debts of heavily indebted African countries that registered growth and reduced poverty.[135] This did not work. Even though cancellation of debts was done in good faith, in April 2001, the IMF and the International Development Association (IDA) issued a joint paper conceding · for the first time that debt cancellation was not benefiting poor African countries.[136] The policies that the countries were required to meet to qualify for debt cancellation resulted in negative growth and a sudden increase in poverty.[137]

Yet another program was introduced in spring 2005, which allowed IMF and World Bank to guide poor African countries on how to remain above the 150% debt-to-export ratio for ten years or more. Out of the thirty-three heavily indebted countries in Africa, only Malawi and Niger are on course. The other thirty-one countries have failed to reach the goals.

Coauthor Mubanga concurs with the World Bank and IMF idea of cancelling Africa's debts. The results would have been different, however, if officials from the World Bank and the IMF had sat down with representatives from Africa to explore common grounds and interests, to share and create mutually agreeable reasoning, and to build future relationships.[138]

Facilitative mediation could clearly guide good faith collaborative problem-solving.[139] At its best, it facilitates broad participation among diverse interests for consensus building and sustainable resolution.[140] The

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134. Due to the problems with corrupt African leaders described earlier, author Mubanga proposes creation of an impartial oversight panel that would screen loans, negotiation terms and agreements, and otherwise provide transparency and accountability to ensure leader good faith. This would be an independent body with representatives from all African countries and done in consultation with the African Union, which is the mother body of all African countries. The officials will be accorded responsibilities that range from screening loans given to African countries to implementing proper usage and coming up with affordable payment plans with lenders.

135. *See* Africa Action, http://www.stwr.org/africa/cancel-africas-debt.html (last visited Mar. 20, 2009).

136. Global Issues, New Report Reveals Third World Debt Package Failings, http://www.globalissues.org/article/227/new-report-reveals-third-world-debt-package-failings (last visited Mar. 20, 2009).

137. Gunter G. Bernhard & Hussain M. Nureldin, *External Shocks and the HIPC Initiative: Impacts on Growth and Poverty in Africa*, 17 AFRICAN DEV. REV. 461-92 (2005).

138. *See generally* Erbe, *supra* note 3, at 393.

139. *See id.*

140. *See id.* at 371, 393.

491

IMF is already intimately acquainted with such mediation.[141] Years ago it created an ombuds-mediator office in response to harsh civil society criticism of its support for mining operations in Peru.[142] That office has already mediated community processes similar to those being proposed here.[143]

Mediation would give African leaders an important opportunity to educate their lenders about the specific reasons why they are defaulting on their debts. African countries are failing to repay their debts on time for a variety of reasons.[144] The major one is drought.[145] Countries like Uganda, Kenya, Tanzania, and the Ivory Coast, just to name a few, depend on agricultural exports.[146] Once they are ravaged by drought, their major source of earning much needed dollars for debt repayment is crippled.[147] The countries end up defaulting on their loans, resulting in the devaluation of their currencies. When the local currency is devalued, the price of imports increases, and the price of exports decreases to very low prices, resulting in stagnant domestic growth.[148] Negotiation would facilitate troubleshooting of this mutually harmful cycle and brainstorming options so that both African and lender interests are satisfied.

Negotiating through face-to-face mediation would also give African nations and lenders a chance to discuss the challenges involved with meeting conditions that qualify African nations as heavily indebted poor countries (HIPC), and thus make them eligible for debt forgiveness. To qualify for HIPC status, poor nations must drop subsidies for basic commodities, eliminate trade tariffs, and open their markets to free trade.[149] As Gerald Lenoir, writing for American Friends Service Committee, notes: "With unrestricted access to African economies, foreign companies flood their markets with cheap goods that wipe out local industries. Instead of supporting independence and development, too many African HIPCs appear

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141. *See generally id.* at 393.

142. *See generally id.*

143. *See* Erbe, *supra* note 3, at 393.

144. *See* Lancet, *supra* note 129; *see also* SACHS, *supra* note 119, at 192.

145. Lancet, *supra* note 129; *see also* SACHS, *supra* note 119, at 192.

146. *See* Dominick Salvator, African Development Prospects: A Policy Modeling Approach 49 (1989).

147. *See generally* Lancet, *supra* note 129.

148. *Id.*; *see also* SACHS, *supra* note 119, at 92. See *id.* for case study analysis of how he has helped other countries reverse this downward spiral and an argument that Africa must drastically increase its crop yields and transportation networks.

149. *See* Gerald Lenoir, *Shaping the Debate*, AMERICAN FRIENDS SERVICE COMMITTEE, http://www.afsc.org/AfricaLifeOverDebt/ht/d/ContentDetails/i/18919.

492

PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL

to   mandate   foster-increased   dependence   and   perpetual underdevelopment."[150]

VI. CONCLUSION

UNESCO defines the culture of peace as:

[A] culture that promotes peaceable diversity. . . .

. . . .

. . . The *ceaseless* culture-creating activity that characterizes the social body involves interaction at every level, from the intrapersonal . . . to the interpersonal—in household, neighborhood, and community, on through successive levels of civic organization through city to the United Nations . . . . Because there is constant interpenetration of levels, the societal capacity for aggression or peace-building depends on patterns developed in every domain . . . . [151]

The coauthors remind us of the resilience of the African spirit, seeing and strategizing practical paths for hope in the face of violent ethnic eruption and repeated betrayal. As seasoned practitioners of many years representing law, medicine, theology, education, and community development, and as students of conflict and peace, they are able to guide the international community with specific ideas that they see bearing fruit.

All agree that truly impartial oversight and direction is critical to confidence building, through the inclusive conflict mechanisms necessary to create "unity in diversity" for sustainable problem solving, transparency, and accountability in the use of funds. Several recommend the conscientious

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150. *Id.* As mentioned earlier, Author Mubanga hopes to produce a television documentary that will examine what is required for a poor country to qualify for debt cancellation and the effect of delaying debt cancellation until a country reaches heavily indebted poor country status to qualify for debt cancellation. The documentary will compare conditions prevailing before countries qualified for debt relief and ask: Has the situation changed for better or for worse?

A portion of the documentary will look at the possibility of unifying the countries of Africa into one entity, the United Nations of Africa (UNA). Uniting the countries of Africa into one dominant force may have many advantages. This is evident in the United States of America (USA) where most poor states, like Louisiana, survive major catastrophe after receiving funding from the federal government.

Some politicians in Africa may feel uncomfortable with people discussing openly the current situation in their countries and may persecute them. However, before the start of recordings, this researcher will spend time educating local political and religious leaders on the importance of this documentary. Moreover, this researcher will make it clear to the local politicians that allowing people to speak freely in this documentary may be the key to getting the vital information that may guide officials from various lending institutions to change their stance on Africa's debts.

151. BOULDING, *supra* note 2.

493

reflective practice exemplified by coauthor Tanto's work in Cameroon. Like Columbia economist Jeffrey Sachs' diagnostic economics, African conflict and peace must be analyzed and evaluated case-by-case, relationship by relationship, and practice by practice.[152]

Most commend integrative rather than positional negotiation tactics. They ask that the communities in conflict be empowered themselves in conflict analysis, including sophisticated evaluation, creation of alternatives, and identification of underlying interests, rather than being asked to rely on the sporadic intervention of skilled outsiders. At times, of course, skilled mediators may still prove instrumental in moving forward, as once again exemplified by coauthor Tanto's decade of mediation in Cameroon and Kofi Annan's recent mediation in Kenya. Leaders and communities must somehow be persuaded to participate in collaborative conflict work.

Africa has a long and revered tradition of restorative justice, or victim-offender mediation introduced to the world through South Africa's TRC. Reflective practice allows for imperfections—new lessons can be learned and tested with each new attempt. Progress occurs through the inner strength to honestly reflect and the collective determination to keep building on what works.

None of the coauthors are proposing an easy answer or panacea. They acknowledge that they need international support in confronting elites, political leaders, governments, and MNCs whose self-interest *holds communities hostage*. At the same time, they see contemporary conflict techniques empowering and mobilizing communities to do what they can to meet their interests. Joined by skillful and devoted civil societies and faith-based networks, coauthor Tanto reports that even political leaders can be moved to serve their community interests

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152.   *See* SACHS, *supra* note 119.

494