Trauma of Conflict Victims and Criminal Prosecutions in Nigeria: Discourse on Post-Conflict Transformation

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ABSTRACT

The aim of this paper is to examine the pursuance of criminal prosecutions after a conflict in healing the trauma of conflict victims to rebuild societies. In most conflict situations, there are different types of victims, thousands of people lose their lives, displace, rape, torture and detain or forcibly disappear. While other people will continue suffer from Trauma of Conflict Victimization. Therefore, the lack of accountability, criminal justice, rule of law can lead to widespread violation of human rights and crime against the law. This paper is qualitative in context, nature, and structure; hence Library Research method and content analysis were adopted and carried out to review the data acquired and evaluate the studies originality. The paper adopted theory of peace making criminology to understand and explain the process of healing conflict victims' trauma in post-conflict transformation situations. The study revealed that, in some cases such as Kenya, Nigeria and South Sudan conflict, the crimes under international law and other serious human rights violations and abuses were committed. The findings also revealed that prosecutions of war criminals and human rights abusers will promote peace and prevent conflict victimization. Furthermore, Post-conflict transformation contain peace building and requires the development of rules, norms that transform potentially violent actors in to non-violent actors and support political, economic, social and military measures and structures aiming to redress the root causes of conflict. The study recommended that, post-conflict policy efforts should focus on peace building, because that is how the warring parties could be settled, negotiation can be facilitated with the armed groups, and the victims could be empowered and compensated. The paper also recommended that the rule of law should not only serve the rights of dominant social groups while leaving other minority groups behind in the post-conflict settings and international institutions should take into cognizance such issues as the entitlements of groups that are vulnerable to marginalization and discrimination- minority groups, women and children, internally or internationally displaced persons and refugees- in a conflict setting or a country.

Keywords: Conflict; Criminal Prosecutions; Post-Conflict Transformation; Victims.

INTRODUCTION

The nature and pattern may differ between one conflict and another and the motive of conflict can differ between regions and nations. But the reality of conflict is a universal phenomenon and it has been happening in different parts of the world, especially in the developing countries or in other words, conflict is an inevitable phenomenon in social setting. Conflict is type of behavior among individuals, groups, or even nations that transcends the regular dispute and dispute that underlies much of the everyday social, economic and competitive activity of society (Burton, 1990). In the 1990s, for instance, civil wars accounted for 94% of all armed conflicts that took place around the world (Ismail, 2008). The destructive consequences of conflict require constructive effort for peace-building by concerned institutions at national and international levels. The Western Europe's post- 1945 Marshall Plan and the expanded mandates of UN peacekeeping

missions in Namibia and Cambodia is one of the classic post-conflict transformations. To consolidate peace, also, about 14 peace building missions were launched in different countries across the continents like Angola, Rwanda, Mozambique, Cambodia, Bosnia, El Salvador, Guatemala and Croatia, and many other countries, between 1989 and 1999. In addition, the United Nations has launched up to 55 peace operations since 1945. Over 80 percent of these operations had begun after 1989 and at least 30 percent have been under way since last decade (Ismail, 2008).

Regarding the cases of post-conflict experiences, some scholars have argued that the only remedy for avoiding the continuing cycle of repression is the recognition of an affirmative obligation on governments to investigate and prosecute gross state-attributed human rights violations (Arriaza, 1990). This obligation has made the individual accountability for serious violations of international law a major turning point since the end of the last century. For example, the Nuremberg Tribunal was the first turning point that placed the principle of personal accountability in the case of widespread violations by stating that crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced (Mendez, 2019). As a result, the subsequent development to this principle was an increase in criminal prosecution of the human war criminals who were responsible for grave human right violations. Even conventions or any party involved in the torture and similar cruel, inhuman and degrading treatment; arbitrary killing and enforced disappearances should be investigated and be penalized. This pointed to the fact that criminal justice is a legal and moral instrument for dealing with the serious humanitarian law violators and an instrument for ensuring the effectiveness of international law. These developments have ushered in proliferation of various institutions of prosecution, such as international courts, ad hoc tribunals, hybrid courts, as well as domestic institutions (Mendez, 2017).

However, there is another camp on the view to pursue prosecutions after a conflict. In other words, the obligation of the local and international laws to prosecute certain human rights violations or war crimes has also been severely criticized by a group a scholars. According to these scholars, the prospect of post-conflict justice usually raises tensions among opposing groups and angers leaders who are directly targeted for their role in perpetrating human rights abuses, which will make the peace deals unsuccessful (Putnam, 2002).

In view of this background, the aim of this paper is to examine the trauma of conflic victims and criminal prosecutions in Nigeria, focusing on post-conflict transformation. To this end, the paper will justify that the limited funds would be spent on some aspects of post-conflict transformation to achieve sustainable peace.

METHODOLOGY

This paper is qualitative in context, nature, and structure; hence Library Research Method was adopted. Library research is a method of gathering data through studying, comprehending and resorting information form secondary sources, such as relevant Academic articles, books, journal, textbooks, virtual resources and documents. Library Research has been defined as “the act of using the resources of library, either in print or online, to find information which satisfies a need or answer a question (Bradshaw, 2017). Qualitative research method is normally based on premise that problems could be solved and practices improved through observation, analysis and description (Sandelowski, 2010). Finally, content analysis was carried out to review the data acquired and evaluate the studies originality.

Theoretical Framework

The study will adopts peace making criminology as a theoretical frame of reference in understanding and explaining the process of healing conflict victims’ trauma in post-conflict transformation in Nigeria. The theory is identified with Pepinsky and Quinney (1991), and was developed in an eclectic mix of radical social science, humanism and a wide range of religious sources. As the title suggests, the theory was aimed

at mobilizing criminologists not for the traditional 'war against crime', but for a process of reconciliation and healing. Macho cynics are likely to scoff at this enterprise, though there is no evidence that declarations of war on crime in Europe and the United States have been particularly successful (Mohammed, Ahmed, Dangiwa & Mukhtar, 2008).

Quinney & Pepinsky(1991) argued that the perception of crime – that is, the subjectively understood 'reality' of crime and, indeed anything else was a 'state of mind' nothing that constituted 'social reality' existed as an objective entity. Thus the 'problem of crime' is shaped by powerful interests in society. However, Quinney later criticised the perspective of phenomenology, and had embraced an explicitly Marxist position. This shift work was strongly influenced by the Frankfurt School, with its emphasis on the manipulation of consciousness by bourgeois ideological formations, such as the mass media. Quinney described his Marxian criminology as 'critical criminology', and argued that because of its inherent contradictions, the capitalist system created large numbers of unemployed people – surplus populations.

According to this theory, the capitalist state attempts to manage these surplus populations by welfare and criminal justice policies, in an effort to stave off social disruption. In Quinney's view, these attempts were doomed to failure, being unable to prevent increases in crime. The crime associated with surplus populations is described by him as 'survival crime' it is crime that arises from living in or at the edges of poverty. However, it was also seen as a form of immature political action – the poor fighting back. In the development of peacemaking criminology, then, we can see a move away from an earlier, purely instrumental view of the law and legal system, with the suggestion of ruling-class conspiracies, towards a more structuralism position, where law and the criminal justice system are locked into the structural imperatives of capitalism as a whole (Mohammed et al, 2018).

Using the peacemaking criminology theory, Mohammed et al (2018) discussed the possibility of using restorative justice to address the grievance of victims and maintaining peace in different parts of Nigeria. Such as the case studies of post-conflict prosecution of Niger Delta militants, Boko Haram members and other violent criminals and insurgents. This is because it is possible for peace to reign after conflict of this nature (terrorism and insurgency) through appropriate protocol in the legal system.

LITERATURE REVIEW

Post-Conflict Criminal Prosecutions

As noted in the introductory section, criminal prosecution of grave human rights abuses as a result of conflict is a debatable issue. Notwithstanding, criminal prosecution has been the most common formal reaction and policy amongst world leaders. There are several international instruments and human rights bodies that contributed to the development within national jurisdictions regarding serious human rights violations (Mendez, 2017). Despite the increasing tendency in international law to investigate, prosecute, and punish serious crimes or violations accompanying conflict, the great debate remains the same: the content and the form of satisfying this obligation under international law on one hand and the imperative nature of this obligation, on the others (Mendez, 2019).

As a result of the 9/11 terrorist event, there was a quick adoption of SC Resolution 1373 (2001), which ordered all UN member states to take deliberate steps in combating terrorism. As a response to the order of the resolution, the UN member states have adopted a lot of measures that were labelled in the name counter-terrorism (Gink, 2012). Although the aim of the counter-terrorism measures was obviously to protect innocent civilians and to protect the state structures against terrorist acts, the resulting policies had many negative impacts on fundamental freedoms and human rights, which might be a motivating factor for the rise of new crop terrorists and even inter-state animosity (Gink, 2012).

Believing that such measures were the only necessary actions to ensure security, many governments turned to blatant denial of freedom and imposed restrictive measures against human rights defenders and civil society activists in various countries, such as Kenya, where new legislations against support for terrorism has contributed to a climate of suspicion against civil society actors (Naomi, 1995). Certain policies have also normalized deprivation of personal privacy, lower fair trial standards, broaden government powers for surveillance and prosecution purposes, restrict freedom of speech, restrict free movement of people, clamp down on some civil societies, and undue treatment of political opponents and public critics of government policies (Varennes, 2003). Similar situation was reported in China, where the global war against terrorism has been used by the authorities to legitimize actions against political opposition, in the name of actions against separatist, terrorists or religious extremists from the Xinjang Uighur Autonomous Region.

Instead of focusing on criminal prosecution, peace building, which involves support for structures that can strengthen the peace and avoid relapse into conflict (UN, 1992), should be taken as a point of departure for interrogating post-conflict reconstruction and peace building with a view to achieving the sustainability of normalization.

Debates on the Post-Conflict Prosecution and the Need for Post-Conflict Transformation

The central question of 'peace versus justice' debate is whether post-conflict criminal prosecutions of civil war combatants help produce sustainable peace, or they pose an unnecessary risk; both of which become central to post-conflict policy discussions (Dancy & Brahm, 2021). After South Sudan gained its independence, soldiers loyal to President Salva Kiir Mayardit and then Vice President Riek Machar had a clash, which ignited an armed conflict between the Sudan People's Liberation Army (SPLA), the national army, and armed opposition groups including the SPLA-In Opposition (SPLA-IO). What followed was that crimes under international law and other serious human rights violations and abuses were committed during the conflict by both government and opposition forces. Thousands of civilians were killed, hundreds of thousands were displaced and countless people raped, tortured, arbitrarily detained or forcibly disappeared. Yet, impunity has been reported on both crimes committed by armed groups and crimes committed by South Sudanese security forces. (Amnesty International, 2019).

In the case Boko Haram in Nigeria, even Nigerian military and the anti-Boko Haram militias cease became sources of abuse and victimization themselves (Brown, 2018). The treatment of the arrested Boko Haram members and the communities they came from generate new grievances and could encourage new sources of violence. The Nigerian military regularly rounds people up *en masse*, including women and children, from villages it liberates from Boko Haram. These people are kept in abusive detention conditions for long period of time. The military also conducts extrajudicial killings and for the purpose of arrest and prosecution they rely on militias for intelligence gathering to identify who is Boko Haram (Brown, 2018).

In the post-conflict periods, warring parties, transitional governments, civil society groups and the international community always consider whether attempts to address past human rights violations will enhance sustainable peace. Trials are highly controversial because they threaten to punish combatants, who are often in a position to spoil unfolding peace processes (Dancy & Brahm, 2021). To this end, two main camps have emerged to recommend how to establish criminal accountability after the termination of conflict. The first camp is made up of proponents of the rule of law (Akhavan, cited Gancy & Brahm, 2021). Under the catchphrase "Peace through Justice", these debaters argue that it is necessary to pursue justice through trials in order to achieve lasting peace, citing the successes achieved by International Criminal Court (ICC) and the global human rights movement. The rule of law proponents contend that addressing past human violations by sanctioning wrongdoings, removing powerful perpetrators from positions of authority, thereby giving a deterrent against future brutality will guarantee long-term peace. For them, by producing the rule of law and accountability, perpetual cycles of conflict will be broken (Dancy & Brahm,

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The rule of law proponents posited that post-conflict prosecution of human rights violators can break cycles of violence. Bassiouni (1996) argued that prosecutions of war criminals and human rights abusers will promote peace because "they serve as deterrence, and thus prevent victimization", and the prosecution in many countries will prevent further atrocities. The proponents of the rule of law outlined three mechanisms for the realization of the positive effect of trials are, the punishment, deterrence and the symbolic expression of the rule of law. Punishment may inhibit the willingness of perpetrators and their ability to instigate further unrest through considerable jail terms or the loss of support they will face because of courtroom revelations. The criminal prosecution will stop particular individuals from committing future acts of violence, and this is called 'specific deterrence.' Punishing these specific individuals may also make would-be perpetrators realize they might be punished, too, if they commit similar crimes. By so doing, the justice has now promotes 'general deterrence (Dancy & Brahm, 2021).

The second set of debaters is composed of experts in conflict management and dispute resolution who are of the view that the peace-promoting potential of justice policies is either non-existent or likely to make post-conflict societies insecure (William, 1997). This camp is also based on accommodation of all parties, even if one or more of the parties has perpetrated human rights violations. According to the accommodationists, skillfully negotiating settlements that sometimes include amnesties protecting perpetrators from punishment facilitate stable peace. While rule of law advocates have celebrated the successes of ICC, the accomodationists argued that the ICCs intervention in countries like Uganda has hampered local peace-building initiatives by discouraging power-brokers from engaging one another in settlement discussions (Peskin, 2009). They also argue that the supposed peace dividend of justice is a legal romanticism, or principled logics of appropriateness that ignore history, therefore non-realistic (Dancy & Brahm, 2021).

Although both positions- the rule of law and accommodationist- have advanced logical reasons for their stands with anecdotal support, the question remains opened "as to whether trials are peace-promoting or destabilizing (Howrad, 1995). Regarding the claims, three points have been developed by Dancy and Brahm (2021) including: First, few scholars have empirically tested the claims made by the proponents of the rule of law and accommodationists, because data are lacking to verify both claims and it is very difficult to model post-conflict peace. Second, up to now there are no enough studies that have distinguished important qualitative differences in the prosecution of human rights abusers. Third, there has not been context-based examination of the post-conflict trials. Trials occur at different times and place, but many scholars have only made implicit assumptions about whether trials are endogenous or exogenous. Others made attempt to model trials, including those trials produced by domestic courts, as an outside shock to balance the post-conflict. By so doing, they pass over selection process owing to the fact that certain post-conflict countries are more willing and able to conduct prosecutions (Keenan, 2006).

However, taking from the arguments of Dancy and Brahm (2021), this paper raises doubt about the effectiveness of prosecution in the aftermath of a conflict. And also as argued by Dancy and Brahm (2021), prosecutions in general may not produce specific deterrence. The threat of prosecutions often increases the difficulty of breaking the bonds of parties' leadership and followership in Disarmament Disengagement and Reintegration (DDR) process. Civil war-era of parties' leadership may still be largely intact and if they are threatened with prosecution, they can rally the subordinates for their defense. This is because breaking the commander-subordinates bonds is one of the most challenging undertakings in DDR. (Gislesen, 2006).

In Nigeria, a committee was set to investigate the decade long Boko Haram conflict. The committee failed to succeed in brokering either a deal or sustained negotiations with Boko Haram, but it ultimately submitted the following recommendations: 'continuing talks with Boko Haram through an advisory committee; creating a victims' fund; granting amnesty to members of Boko Haram and Ansaru who renounce violence and agree to disarm and reintegrate; granting amnesty to those for whom evidence of crimes is lacking; and

rehabilitating the Civilian Joint Task Force and other vigilante groups to prevent their transformation into new security threats (Brown, 2018). The foregoing is an indication that the goal of post-conflict periodshould be peace building.

Peace building requires the development of rules and norms that transform potentially violent actors into non-violent players in a regularized political process (Dancy & Brahm, 2021). According to the British Army (1997:2), Peace-building involves actions which support political, economic, social and military measures and structures aiming to strengthen and solidify political settlement in order to redress the causes of conflict. These mechanisms to identify and support structures that tend to consolidate peace, advance a sense of confidence and well-being and support economic reconstruction. This concept should be the goal of post-conflict transformation not on criminal prosecution.

CONCLUSION

The paper has argued that the pursuance of criminal prosecutions after a conflict does very little to heal the trauma of conflict victims and rebuild societies. In most conflict situations, there are different types of victims, thousands of people lose their lives, displace, rape, torture and detain or forcibly disappear. While other people will continue suffer from Trauma of Conflict Victimization. Therefore, the lack of accountability, criminal justice, rule of law can lead to widespread violation of human rights and crime against the law. Examples have been drawn from the case studies of some countries, such as Kenya, South Sudan and Nigeria where prosecution did not yield any positive outcome in the reconstruction of South Sudan and Nigeria, for instance and in ending terrorism threat and achieving sustainable peace in these countries. In conclusion, post-conflict policy efforts should focus on peace building, because that is how the warring parties could be settled, negotiation can be facilitated with the armed groups, and the victims could be empowered and compensated. When it became prosecution of war criminals becomes necessary, the rule of law often serves only the rights of dominant social groups while leaving other minority groups behind. Therefore, the local and international institutions should take into cognizance such issues as the entitlements of groups that are vulnerable to marginalization and discrimination- minority groups, women and children, internally or internationally displaced persons and refugees- in a conflict setting or a country. These entitlements have been established under international law. International community, especially members of the UN Security Council and other humanitarian agencies should come up with a holistic approach to address sexual and gender-based violence in conflict-affected and post-conflict societies. This can be done through access to sexual and reproductive health.

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