The Curious Relationship Between Civil Conflicts and Existing Legal Systems in Africa:

The Liberian Experience

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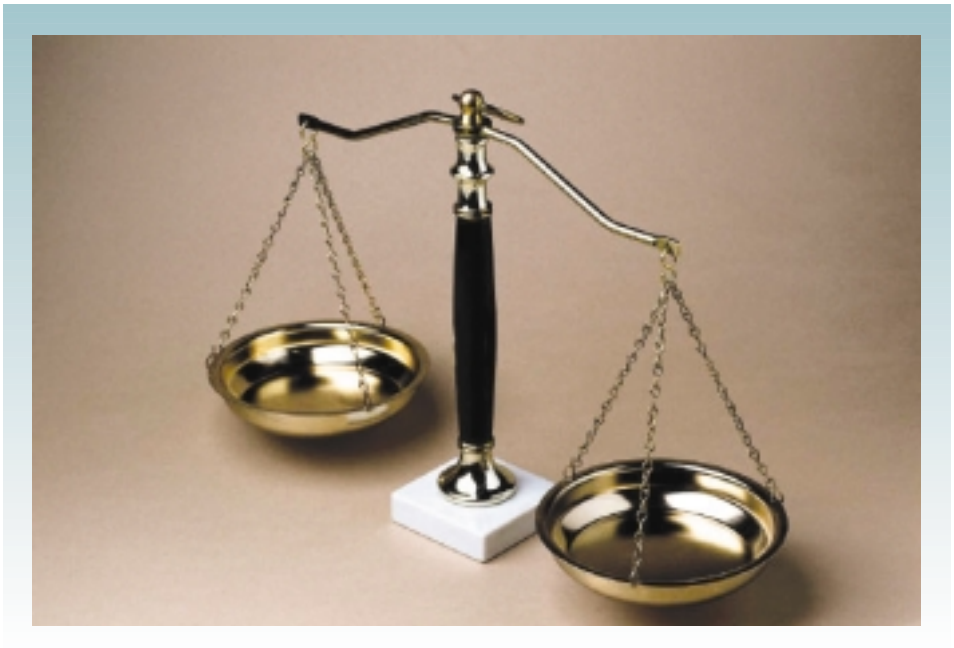

The existing legal systems (i.e. the constitutions, statutes and other rules) in most African states constitute both a significant cause and the worst victim of civil unrests (which include riots, coups and civil wars) in these countries. Politicians and other radical sectarian leaders invariably cite injustice and the violations of the constitution as a major reason for their resort to the extra-judicial measures such as riots and war in demand of social change. In the extreme case of armed rebellion, including military coups, the often stated justification is that "armed struggle" is the only option left for dissenters because the existing legal system is intolerant of accommodating opposing views and irredeemably incapable of resolving conflicts through a fair and orderly process.

What is tragic, of course, is the use of one evil to cure another evil—the choice of disregarding the legal system as a means to stop its abuse. Indeed, because the nature of civil unrest is defiance of the established legal system, all civil unrests in one form or the other weaken and or alter the very legal system which it ostensibly seeks to restore.

The experience of Liberia proves that a civil unrest inflicts its maximum damage to the legal system at the time of its resolution. In particular, the pattern of settling conflicts in Africa whereby state power is traded to the rebels in exchange for their disarmament does not only amount to society's acceptance of willful defiance of the law, but also represent a somewhat glorification of the use of arms to gain power, particularly if the rebels are not held accountable for their criminal conduct and human rights violations during the unrests.

An effective strategy for conflict resolution and prevention in Africa, as a whole, and Liberia in particular, there-fore requires a multi-pronged effort to begin with addressing the structural, philosophical and logistical inadequacies of the existing national legal systems, followed by implemen-

tation of an enforceable mechanism that demands every social change to be pursued through the framework of the improved national legal systems and imposes stringent requirements of con-sequence for non-excepted deviations.

The National Legal System as a Cause of Civil Unrests

African nations being generally less developed, their legal systems, like other social institutions, are consequentially less developed in terms of age, experience and manpower.[i]

In addition to the young age of African constitutions, the original designs and contents of African legal systems are one set of factors that create a recipe for many of the social unrests and upheavals that have plagued the continent for the most part of its post-independence history. Most of the constitutions of African states are patterned after those of their colonial masters in almost every respect, from the structure of the state to the adopted system of economic planning, and incorporating little or nothing from the system of government and economic organizations that existed in Africa for numerous centuries.[ii] These constitutions also disregarded or downgraded local African realities and cultural practices. The post-independent Liberian Constitution of 1847 is typical of the replication of colonial legal models by the first generation of post-colonial leaders. Drafted by an American, the first Liberian Constitution copied almost verbatim several provisions of the American Constitution, and the principal branches and smaller agencies of government even called exactly as they were in America. In a formal statement of the relegation of African cultures and values, the Liberian 1847 Constitution contained a so-called Repugnancy Clause which essentially stated that all indigenous Liberian/African customs and practices that were inconsistent with the Constitution were null and void.

The effect of the disconnect between the imported legal systems and the socio-cultural values of the African people soon became obvious following the attainment of independence and the dawning of the realities of self government. Because most African constitutions did not consciously address the prospects and possible consequences of African tribal culture and consequent tribal loyalty, these legal systems were without capacity to effectively respond when tribalism undermined national unity, and in some cases led to secessionism as was witnessed in Nigeria and the Congo in the 1960s.[iii] Also, unrealized expectations of material prosperity following liberation and independence led to disillusionment with Western capitalism adopted from colonial masters, and gave rise to a craze for socialism which ignited several civil unrests. It is significant that there have been little or no large scale violent civil unrests in Senegal and Tanzania where the received laws and systems were given some African coloration by way of Leopold Seghor's *Negritude* and Nyrere's *Ujama.* The wave of military coups that have affected almost every African state is also attributable to the failure of the legal systems in addressing both the problem of tribalism and the excruciating realities of unaculturated capitalism.

Additionally, a major weakness of the legal system contributing to civil unrests is the lack of institutionalized governance and the concentration of power in the Presidency, which enables the president to disregard all constitutional constraints on his/her authority. In Liberia, the concentration of powers in the presidency is attributable to many factors, prominent among which are the continuation of successful despotic practices of past leaders, and the general low level of economic development vis-à-vis the government being the largest single employer in the economy. The "power of the purse" has also been noted as a major factor contributing to the existence of the imperial presidency in Liberia. The particular system of disbursement of public finances in Liberia gives the Executive Branch unfettered power over how and when to disburse budgeted funds to the other branches; this practice is one of the important tools regularly used to undermine the independence of the Judiciary.

The concentration of power in the presidency seriously affects the national legal system in that it destroys the traditional system of checks and balances and gives the president unconstitutional power to dictate what laws the legislature pass, how cases are decided by the courts, and whether a particular law is imple-

mented or constitutional guarantee is obeyed. Ultimately, concentration of power undermines the independence of the judiciary and in turn negates its status as an unbiased and effective dispute resolution mechanism, thus forcing dissenters to believe that civil unrests are the only viable means of vindicating public rights and bringing about needed social change.

The history of Liberia, from the time of independence on July 26, 1847 to the coup of April 12, 1980, is a good account of how lack of institutionalized governance along with subsequent personal rule by the President affects the legal system and leads to civil unrest. Founded as a haven for freed slaves from North America and emerging as the first Negro republic, Liberia carried the hopes of many who desired to show the world that blacks were capable of democratic self government. In a betrayal of blacks everywhere, Liberia soon became a despotic state where the ruling class of former slaves created their own system of reverse slavery, subjugating the native inhabitants of the land to the worst forms of every inhuman treatment suffered under white slave masters. Sustained practice of rampant human rights abuse in Liberia led to the creation of a UN commission in 1957 which established the involvement of the Liberian Government in forced labor, and partly led to calls in the 1950s for Liberia to be put under a UN trusteeship.

Moreover, while the Liberian Constitution had detailed provisions concerning civil liberties and other

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democratic norms, succeeding Liberian presidents during the period between 1847 and 1980 willfully curtailed all civil liberties, proscribed criticisms of the Government, and entrenched the then True Whig Party as the sole party allowed in Liberia. President William V. S. Tubman who ruled Liberia for 27 years from 1944 to 1971 is generally agreed to be the valedictorian of all despotic Liberian presidents of this era.

Tubman ruled Liberia virtually as a king who had no restraints on his authority or recognized any system of checks and balance. He appointed and removed judges based on their loyalty. He had laws made and repealed based on his whims. He entertained no criticism, and most of his political opponents were driven into exile, murdered or imprisoned on fake charges of treason and sedition.

By the time Tubman died in Office in 1971, the entire Liberian legal and political system had been beholden to the now "imperial presidency." Opponents to the status quo had no illusions that needed change in Government and their living conditions would be almost impossible to achieve through the established legal framework maintained and manipulated by the very Government. Hence, the otherwise sincere efforts of Tubman's successor, William R. Tolbert, to gradually democratize the society were too little and too late as on April 12, 1980 a group of junior military officers overthrew the Liberian Government, killing Tolbert and several of his top ranking offi-

cials. Not surprisingly, the coup leaders suspended the existing legal system, including the Constitution which they believed to have been the main agency of their exploitation, and made adoption of a new constitution one of the essential conditions for returning the country to civilian rule.

The adoption of a new constitution in 1986 and the election of the military-turned civilian Samuel Doe as President did not change the cycle of oppression. Just as the settlers (also known as Americo-Liberians) repeated after their former white slave masters, Samuel Doe skillfully copied and made maximum use of every despotic practice of the True Whig Party he overthrew. Doe first tribalized the national army and then used it to reign terror on the people. He resented criticism and had his political opponents killed, exiled or silenced in one form or the other. He brutally attacked the Liberian student community which emerged as the voice of the suffering masses, filling the vacuum created by the effective elimination of opposition political activities.[iv] He also specifically targeted the judiciary. On one occasion in 1987 he fired the entire Supreme Court bench, although the Constitution mandates impeachment as the sole means of removing judges and justices.[v] When a subsequent Chief Justice by the name of Cheap Cheapo proved just a little independent, Doe had him removed through a kangaroo impeachment proceeding.

President Doe's siege of the Liberian Judiciary coupled with his many other undemocratic conducts frustrated efforts for a peaceful change. The inevitable choice of war led to several coup attempts against him, and ultimately the full-scale armed rebellion started by Charles Taylor in 1989.

It is a tragedy of Liberian history that every recent government has been a change of bad for worse. No one confirmed this fact more than Charles Taylor. Despite the carnage caused by his seven-year rebellion and the many deaths blamed on his troops and himself personally, Taylor was in 1997 elected President of Liberia with over 70% of the total votes cast in the elections. By giving him such a huge popular mandate, Liberians hoped that Taylor would use his election to heal the wounds of war and begin the reconstruction of the country massively damaged by many years of war. Like all others that came before him, Taylor failed to meet the expectations of the Liberian people. He revitalized the system of patronage and nepotism maintained by the old True Whig party, perfected the privatization of the security forces as was begun by Samuel Doe, and flouted the entire legal system with a disdain never before seen in Liberia. Naturally, history repeated itself with the rise of the Liberians United for Reconciliation and Democracy (LURD). The rest, is, of course, the civil war in Liberia which end is pinned on successful implementation of the August 18, 2003 Accra Comprehensive Peace Agreement.

A fair conclusion from the foregoing is that opposition to every established African Government is substantially caused by the weaknesses in the existing legal system, be it inadequate substantive laws or the limited coercive force of the law to curb tyranny and ensure that the rights of the individual are guaranteed through due process of law. In other words, the choice of what means to use to express dissent and pursue change is to a large extent dependent on the capacity and integrity of the legal system to channel grievances and resolve conflicts. The war in Liberia demonstrates that where the legal system is weak or not respected by the government sworn to uphold it, the established and supposedly orderly process of dispute settlement is rejected in favor of self-help and other extra-judicial measures.[vi]

The Legal System as a Victim of Civil Unrests

The effects of civil unrests on the national legal systems of African states are far reaching and co-extensive with the beginning, duration and end of the civil conflicts. Generally, civil conflicts in Africa flout the existing legal systems, and ultimately create/impose new laws or legal morality.

The Flouting of the Legal System

It is now well-established that governments are created for the welfare of the people, with duty to provide for public peace. A traditional paradigm of social order therefore provides that government, through its various bodies, represent the supreme maker, interpreter and enforcer of laws to

govern all private and public relations within its territorial control. Every person aggrieved by a public or private wrong must therefore present his grievances to the government to redress the wrong. With limited exceptions brought about by a few recent developments in human rights and international law, whatever the national highest Court says represents the final disposition of matters.

Implied in the preceding paragraph is the rule, albeit subject to the theory of natural law and other philosophical attacks not necessary to be discussed here, that an individual or a group of individuals have no right to self-help, at least not if law and order should be preserved. Hence, because civil unrest is in a sense self-help by either a social group or a group of diverse citizens, it is illegal and, by its own nature, a rejection of the established legal system. It essentially flouts the legal system and amounts to a disruption of law and order for every period it exists. This act of flouting the legal system is axiomatic. In and by itself, its impact is relatively minimal because it is not too different from the various of intentional infractions of the law.

The many drastic ways that civil unrests affect the national legal systems consist of the series of actions and inactions forced on society in its dealing with the dissenters leading the civil unrest. The first drastic effect is the violation of the sovereignty of the state,[vii] particularly in the case of a civil war. In such situation, the rebel's seizure and holding of any piece of the national territory injures sovereignty and limits the territorial applicability of the established legal system. The greater the territorial holdings of the rebels, the more shrunk the applicability of the national laws. Needless to say, the magnitude of this impact on the legal system is far reaching because the existing legal system becomes impotent to protect persons and properties in the part of the national territory controlled by rebels. Such areas may therefore impose its own legal and socio-politico system in contradistinction to the established national system.

Another effect of civil unrest on the legal system is the decision forced on the state to negotiate with willful violators of the laws. When civil unrest turns into a full scale and long drawn civil conflict, there is a general preference for a negotiated settlement of the conflict. The calls for negotiations are generally motivated by the cost of conflict measured in terms of damage to lives and properties. While neither the calls nor the subsequent negotiations are unreasonable, the fact remains that negotiating with willful violators of the law greatly affects the legal system by worsening its already poor legitimacy and weakening the demand for obedience that it generally commands.[viii]

Creation of New Laws and Legal Morality

The ultimate impact and the maximum effect of all civil conflicts on the established legal systems in Africa are made at the end of the conflict. Depending on the scale and the relative damage threatened or actually caused, a typical civil conflict ends the destruction of the existing legal regime and begins the creation of a new legal order reflecting the views of the dissenters or condoning their criminal acts. The creation of the new laws may be by way of adopting a new constitution or substantially amending the existing constitution. Liberia experienced the change of constitution when in 1986 it adopted a new constitution replacing the 1847 Constitution, and supposedly reflecting what would have been a new humane dispensation.

Even where a new constitution is not adopted, the end of a civil conflict affects the legal system by creating what could be called a new legal morality consisting of the implicit acceptance, if not glorification, of the act of rebellion by not only rewarding the rebels with state power but also immunizing them from liability for acts perpetrated during the applicable civil conflict. The resolution of the successive civil unrests in Liberia demonstrates a consistent pattern of awarding armed dissenters with power without demanding of them some accountability for criminal acts that were not necessary to prosecution of the war.

The 1980 coup led by Master Sergeant Samuel K. Doe was one of the bloodiest changes of government in Africa. Doe did not only kill President Tolbert, he also killed, after a reasonable cooling-off period, seventeen of Tolbert's cabinet ministers. The unnecessary killings by Doe war-

ranted a strong condemnation. However, both the Liberian populace and the international community remained practically passive, and Doe assumed the presidency of Liberia. Liberians hailed him as a redeemer and international recognition of his government was not wanting. He remained a key partner of the West and the USA in particular up to the time of his demise in 1990.

Similarly, when the Charles Taylor-led rebellion against Doe succeeded in overthrowing Doe, the dissenters splintered and refused to disarm until they were given control of the government. They opposed a civilian led interim Administration and ultimately succeeded, after many costly peace conferences to take over the Government. The same pattern trading power for disarmament appeared to have been recently affirmed and continued by the Accra Comprehensive Peace Agreement of August 18, 2003 aimed at ending the war in Liberia. Under the current Accra Agreement, the three belligerent armed parties were awarded a significant percentage (more than half) of the Liberian Government in return for their promise to lay down their arms and have law and order restored in the Country.

What has been absent in the resolution of each of the aforementioned civil conflicts in Liberia is a measure of some legal accountability by the rebels for many of the acts of murders, rapes, and other violations of human rights they allegedly committed during the civil unrest. Such a system of accountability is necessary to avoid giving incentives to other power seekers who may see a peace accord's silence on all war crimes as a statement by society that war is an acceptable regular way to acquire state power. Given the Liberian experience in the 1990s where the trading of state power for disarmament has not brought lasting peace, but, in fact apparently encouraged other armed groups, the need to include comprehensive criminal responsibility in each peace agreement can not be overemphasized.

The "power of the purse" has also been noted as a major factor contributing to the existence of the imperial presidency in Liberia.

A Final Thought

Most civil conflicts in Africa are substantially caused by the decline (from abuse) of existing national legal systems below a critical point for continued legitimacy. The existence of the civil conflict further erodes the viability and legitimacy of the national laws, while the resolution often proves worse. It is conceded that negotiated peace agreements to end civil conflicts are necessary based on the war and the relative blame of the government on the one hand and some considered merit of the dissenters. However, in order to restore the moral force of the law and as a necessary condition to maintaining peace and stability, a system of proportionate accountability must characterize all resolution of conflicts.

Under such conflict resolution system, the rebels may be allowed to take or share power if the stated cause of rebellion has foundation and the means of war is found necessary, like if the system did not allow for peaceful reform. Similarly, when the actions of the rebels are found to have surpassed what was necessary to achieve their goals, then both the entire group and the individual members should be held to account for their action both under domestic and international laws within a system of cumulative relief, recognizing that there may be constraints to establishing a forum or achieving relief under either domestic or international laws. Incidentally, the applicable substantive laws for imposing such criminal responsibility and providing civil relief already exist

under the various national laws and international human rights instruments like the African Charter on Human and People's Rights. Similarly, a flexible forum could be created either through a regular or special court or through a Truth and Reconciliation Commission.

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References

i With the exceptions of Ethiopia, Liberia and Egypt, most African states became independent during the second part of the 20th Century.

ii See EDWARD BEVER, AFRICA 1 (Oryx Pres, 1996): "Africans developed sophisticated and successful political institutions that made possible great empires in Egypt, the Sahel, and Zimbabwe". Bever also asserts that "[G]iven the vitality of Africa's pre-colonial political institutions...colonialism distorted Africa's political development and left it ill-prepared for independence."

iii See Bever, p11 AFRICA, Supra, detailing the tribal and economic interest which brought about the Biafran war, implying that if these were properly addressed in time things would probably have occurred differently. "Just before succession, Gowon had declared a new, 12-state structure for the country, which came too late to avoid war, but managed to secure the loyalty of several minority groups in the East that would otherwise have joined the rebellion."

iv Doe repeatedly arrested student leaders. In 1988 he had expelled from the University of Liberia and arrested eleven student leaders, including this author, for leading a protest against an Executive order that banned all student political activities in Liberia.

v Although President Doe officially said he only "requested" the resignation of the Bench, no one was in doubt that this was a dismissal when Chief Justice James Nagbe and all Associates justices promptly complied with the request.

vi The relationship between the state of the legal system and civil unrest is demonstrated by the resolution of 2000 presidential elections dispute in the United States. While a good number of Americans may not have totally agreed with the US Supreme Court disposition of the mater, the decision of that Court was however, generally accepted without incident mainly because of the independence and integrity the Court has cultivated over the years. Similar elections disputes have been the cause of civil unrests in Africa.

vii Sovereignty refers to a state's right to exercise complete control over all persons and things within its territorial confines. At the inception of a civil conflict, the government usually argue sovereignty as a basis to fight the dissenters and to deny them external assistance and recognition. The sovereignty argument hardly receives popular support because, as stated earlier, at the time most civil wars are started the national legal system has fallen below the minimum milestone for legitimacy and perceived as irreparable from within.

viii The alternative choice of demanding a rigid application of the law and therefore refusing to negotiate with people who are otherwise criminal under the existing law is difficult to advocate when it is used as ploy by the government to mask its own misrule, and particularly when there is some merit to the grievances of the dissenters.