

TABLE OF CONTENTS

EDITORIAL.....	2
1. Mr. KAYIGAMBA Callist	
DETERMINANTS OF INFANT MORTALITY IN RWANDA.....	5
2. Dr. Carpophore Ntagungira	
FLAT TAX. IS RWANDA PAVING THE WAY OFF THE BEATEN TRACK?.....	36
3. Dr. KAAYA Siraje and MUTONI Rose	
THE IMPORTANCE OF CUSTOMER CARE IN SUCCESSFUL RUNNING OF A COMPANY (Case study of MTN Rwanda cell).....	40
4. Mr. KARIMUNDA MUYOBOKE Aimé	
UBUNTU AS AN AFRICAN ARGUMENT AGAINST THE DEATH PENALTY.....	87



EDITORIAL

Promoting scientific research for better service to the community is the main reason of the publication of this 19th issue of ULK Scientific Review that we are presenting to you.

A major concern for the international community for a long time, particularly in developing nation is the improvement of child health. Rwanda's intention to reduce infant mortality took centre stage in 2000, when the Vision 2020 was launched. The type of place of residence, maternal education, children ever born and preceding birth interval were reported to be the major determinants of infant mortality. Among these, bio-demographic factors proved to be the most significant factors associated with the risk of infant mortality in Rwanda.

The author, Mr. KAYIGAMBA Callist, a lecturer at ULK in the department of Population studies in its study on "*Determinants of infant mortality in Rwanda*" recommends intervention on increasing the availability, affordability and accessibility of public health services particularly in rural areas of Rwanda, promotion of education of the girl - child in Rwanda, strengthening Family planning in th e population policy as well as Information Education and Communication (IEC) on the negative effects of short birth intervals.

Among the three main types of taxation that the world has experienced, there is flat tax which is constant but the absolute value of the levy increases with income. In his research: "*Flat Tax. Is Rwanda paving the way off the beaten track?*", Dr Carpophore NTAGUNGIRA advises the Rwandan government especially the Rwanda Revenue Authority to adopt to lead with flat tax as it would win with it by increasing tax revenues.

The third authors, Dr. KAYA Siraje, a lecturer and Dean of the faculty of Economic Sciences and management and MUTONI Rose, a student in Management department at ULK say in: " *The importance of customer care in successful running of a company (Case study of MTN Rwanda cell)* " that Enterprises today are facing a growing list of challenges namely the customer service.

As MTN, a Company of telecommunication has had its share in this domain. It experiences complaints especially about un reliable net work. Authors have therefore recommended MTN to consider customer care so as to survive because customers are the key to the success of any business and they have given some suggestions to MTN in order to improve its customer care services offered to its customers so that it can highly compete with other telecommunication companies.

Mr. KARIMUNDA MUYOBOKE Aimé, a lecturer of Criminal Law at ULK researched on the topic: " *Ubuntu as an African argument against the death penalty* " where he intended to resolve the broad question of whether the death penalty did exist in the pre - colonial Bantu Laws. He concluded by saying that even if the legal meaning of this concept is very recent, it evolved slowly but very consistently. We sincerely address our heartfelt thanks to the contributors and readers both internal and external who allowed this 19th issue of ULK Scientific Review to come out.

We are grateful to Prof Dr KANIMBA MISAGO for his contribution to the advancement of science in general and of the ULK Scientific review in particular.

Prof. Dr NGAGI M. Alphonse.

The Rector

DETERMINANTS OF INFANT MORTALITY IN RWANDA

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ABSTRACT

This paper is drawn from my master's thesis done in 2009 and focuses on the factors associated with infant mortality in Rwanda. It specifically examines how infant mortality is related to socio-economic, bio-demographic and environmental characteristics such as province of residence, type of place of residence, level of maternal education, wealth index, age at first birth, number of children ever born, preceding birth interval, source of drinking water and type of toilet facility. Studies carried out in Rwanda indicate that majority of the under - five deaths occur in infancy (Habimana 2006) and yet, the factors that influence infant mortality are poorly understood. Hence, the purpose of this study was to establish the determinants of infant mortality in Rwanda.

Cox regression model was the main tool used in the analysis due to its capacity to account for problems like right-censoring. This model was estimated using the Third Rwanda Demographic and Health Survey (RDHS-III). Results indicate that all the variables were significantly related to infant mortality except province of residence, maternal age at first birth and all the environmental factors which included source of drinking water and type of toilet facility. While other variables showed hypothetically expected results, the case was different with province of residence and wealth index. Children in Western province reported lower risks of dying in infancy compared to those in Kigali. Also, children in households of high wealth index indicated a higher risk of dying in infancy compared to children from low wealth index households.

DETERMINANTS OF INFANT MORTALITY IN RWANDA

By

Mr KAYIGAMBA Callixte

INTRODUCTION

Improvement of child health has always been a major concern for the international community for a long time, particularly in developing nations. In 2000, the Millennium summit adopted eight Millennium Development Goals (MDGs), one of which (MDG 4) was to reduce Under-five Mortality Rate (U5MR) by two-thirds between 1990 and 2015. In this millennium declaration, both the U5MR and Infant Mortality Rate (IMR) were identified as the two key indicators for monitoring progress towards the achievement of this goal (UN Development Group 2003).

In this regard, however, infant mortality has been reported to be the most important indicator as mortality declines at a slower pace among children below one year (particularly neonates) than the rest of the children under-five years (NISR & ORC Macro 2006). Hence, monitoring the reduction of infant mortality becomes a prerequisite for the achievement of the entire MDG 4 (Child Mortality Coordination Group 2006).

In recent studies, it is revealed that a child is 500 times more likely to die in the first day of life than at one month of age. It is also reported that universally, infant mortality accounts for about 60 percent of all under-five deaths (UNICEF 2008). Hence, based on these statistics, and the fact that infant mortality rate is one of the world's indicators of development, more efforts are required on the part of governments to divert this trend.

Since the 1960s, the global child death rate has declined tremendously from about 20 million in 1960 to around 10 million in 2006. Available statistics indicate that out of the 10 million child deaths, 4 million died within one month, while 2 million died in the first 24 hours of life (UNICEF 2008; WHO 2005). This is further supported by UN (2008) in its Millennium Development Goals (MDGs) report which reveals that about 37 percent of under - five deaths occur in the first month of life, while under - nutrition claims more than one- third of these deaths.

Though many studies seem to concentrate on under-five mortality, infant mortality has been singled out by many scholars as "one of the most sensitive and commonly used indicators of the social and economic development of a population" in the twenty first century (Masuy- Stroobant 2001). Hence, nations and states, both developing and developed, that have put emphasis on the reduction of infant mortality in their development agenda have indicated a declining trend of the same. UNICEF et.al (2007) jointly underscore the worldwide falling levels of mortality for the first time in 2006, where a 25 percent drop was recorded from the infant and child mortality figures of 1990.

In Europe, USA and other high - level income countries, infant mortality started slowing down around 1900, mainly due to improved nutrition and sanitation (Masuy - Stroobant 2001). The declining levels of infant mortality also extended to developing countries between mid-1980s and throughout the 1990s. However, this scaling down trend has of recent "reversed itself in some countries of sub-Saharan Africa" (Rustein 2000).

Hence, based on this literature, developing countries particularly in sub-Saharan Africa (SSA) continue to record the highest levels of infant deaths.

Compared to industrialized nations and other developing countries, it is quite alarming that since 1990, SSA has been contributing only 1 percent of the average annual rate of reduction of the infant and child mortality and yet, in order to achieve the MDG4 target, it requires, on average, an annual reduction rate of 4.4 percent (UNICEF et.al 2007). While Sweden and Iceland, which are among high-income countries, indicate the lowest mortality rates at 3 infant deaths per 1,000 live births, other countries in SSA such as Sierra Leone, Angola, Niger and Liberia continue to demonstrate high unacceptable rates of 270, 260, 253 and 235 infant deaths per 1,000 live births respectively (UNICEF 2008).

Current statistics reveal that SSA, with 88 deaths per 1000 live births, has the highest rates of infant mortality compared to other regions such as developed countries (6 deaths per 1000), least developed countries (85 per 1000) and Northern Africa with 45 infant deaths per 1000 live births (Population Reference Bureau 2008). Rwanda, with IMR of 86 ranks fifth among 19 countries of Eastern Africa, the highest being Somalia (117) and Reunion being the lowest with 8 infant deaths per 1000 live births.

1.2.Problem Statement

In studies conducted in many countries of SSA, infant mortality has been found to be associated with socio-economic, bio-demographic and environmental factors (Imam & Koch

2004; Madise & Diamond 1995; Odimegwu & Mustafa 2008; Mutunga 2007). In this regard, it has been observed that SSA, with 88 deaths per 1000 live births is the most disadvantaged region in terms of infant mortality (Population Reference Bureau 2008). Rwanda, a small country in SSA and one of the 19 countries in Eastern Africa ranked 5th among these countries with the highest infant mortality.

Since the 1950s, infant mortality rate (IMR) in Rwanda has been above 85 deaths per 1000 live births, a figure it attained in 1992. In 2000, due to the 1994 genocide, IMR increased to 107 deaths per 1000. However, the government of Rwanda made a commendable effort to reduce it to 86 deaths per 1000 in 2005 (NISR & ORC Macro 2006).

Rwanda's intention to reduce infant mortality took center stage in 2000, when the Vision 2020 was launched. This policy document is one of the pillars of development in Rwanda, which projects that IMR will have reduced from 107 in 2000 to 50 deaths per 1000 by 2020. Unfortunately, this figure surpasses Rwanda's MDG target for infant mortality, which is supposed to be 28 deaths per 1000 live births attainable by 2015 (Republic of Rwanda 2007). At this point, it becomes difficult to justify Rwanda's inability to attain infant mortality MDG target by 2015 irrespective of action plans and interventions made after the 1994 genocide.

In terms of literature, there is limited empirical research on infant mortality in Rwanda and therefore, little is known about the associated factors.

Information provided by the 2005 Rwanda Demographic and Health Survey (RDHS) report does not scrutinize the net effects of the factors and thus cannot provide a good picture of infant mortality in Rwanda (NISR& ORC Macro 2006). The available studies on child mortality have only focused on the factors associated with under-five mortality (Habimana 2006; Gakusi & Garenne 2007). In his study on the determinants of under-five mortality in Rwanda, Habimana (2006) observes that majority of the under-five deaths occur during early infancy. However, the factors that influence infant mortality are poorly understood. Hence, the purpose of this study is to establish the determinants of infant mortality in Rwanda.

1.3 Research Questions

1.3.1 What are the major determinants of infant mortality in Rwanda?

1.3.2 What is the effect of socio-economic, bio-demographic and environmental factors on infant mortality in Rwanda?

1.4 Objectives of the Study

The general objective of this study is to establish the determinants of infant mortality in Rwanda. The specific objectives include:

1.4.1 To establish the effect of socio-economic factors on infant mortality in Rwanda.

1.4.2 To determine the effect of bio-demographic factors on infant mortality in Rwanda.

1.4.3 To investigate the effect of the environmental factors on infant mortality in Rwanda.

LITERATURE REVIEW

This chapter is concerned with the views of other scholars on the factors associated with infant mortality. It provides support to both theoretical and analytical frameworks through which the study was carried out. The focus of the chapter is mainly on socio-economic, bio-demographic and environmental factors and how these are related to infant mortality. The conceptual and operational models of this study are based on Mosley and Chen (1984) framework and all the literature rotates around this model.

In a study conducted on the determinants of infant mortality in Malawi, it has been observed that socio-economic factors have a stronger effect on infant mortality than demographic factors (Madise & Diamond 1995). However, a study conducted in Zambia indicates that demographic factors tend to be more significant at neonatal stage due to bio-demographic factors which may be either genetic in nature or as result of the birth process complications (Madise, Banda & Benaya 2003). According to a study on environmental determinants of child mortality in developing countries and Kenya in particular, environmental characteristics of the household have also been reported to have additional significant effects on child and infant mortality (Rutstein 2000; Mutunga 2007).

2.1 Conceptual and Operational Frameworks

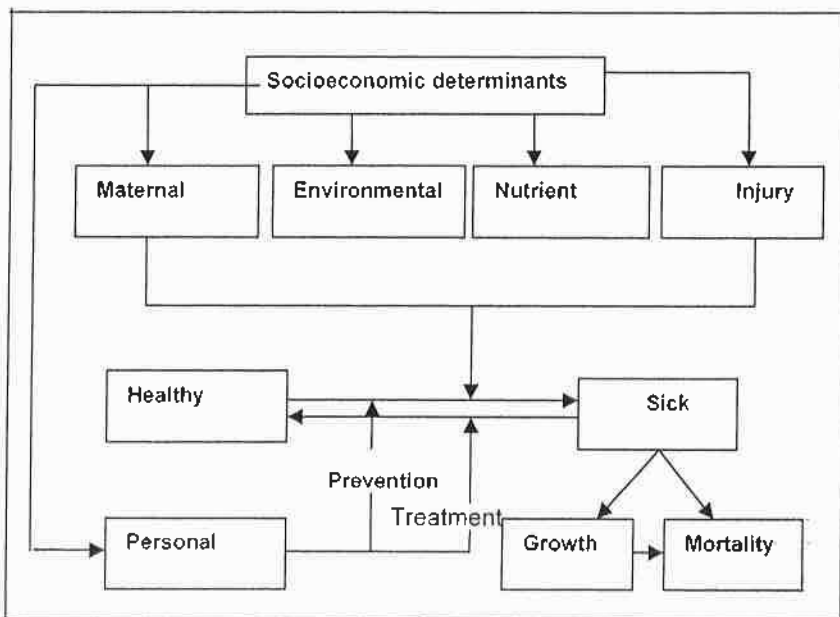
2.1.1 Conceptual Framework

There are several frameworks used to guide in the analysis of effects of different factors on infant mortality.

In this study, however, the Mosley and Chen (1984) framework was the principal model. This framework emphasizes that variation in infant and child mortality is explained by differentials in socio-economic, bio-demographic and household environmental conditions.

Mosley and Chen (1984) were the first scholars to identify fourteen proximate determinants from their study of intermediate biomedical factors. These proximate factors associated with infant mortality were later reduced to four categories: maternal factors, environmental factors, availability of nutrients and injuries as illustrated in *Figure 2.1*

Figure 2.1: Illustration of Conceptual Framework



Source: Mosley, W. and L. Chen. (1984) "An Analytical Framework for the Study of Child Survival in Developing Countries", *Population and Development Review* 10: 25-45

From figure 2.1, the following conceptual hypotheses can be formulated:

Socio - economic factors influence infant mortality through proximate factors.

Maternal factors influence infant mortality directly.

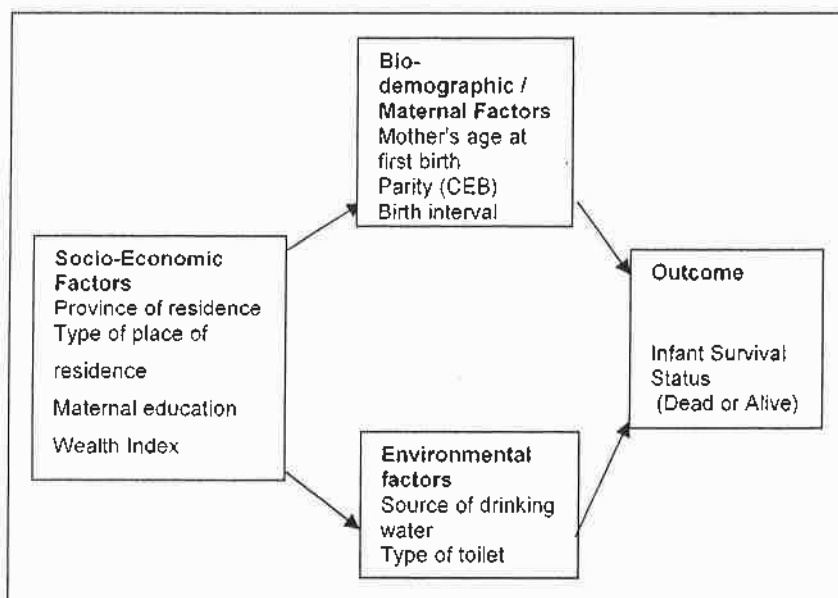
Environmental factors influence infant mortality directly.

2.1.2 Operational Framework

Operational framework illustrated in *figure 2.2* is used as a demonstration of how the conceptual framework is applied on selected variables in the study. Independent variables which constitute the socio-economic factors have to operate through the maternal and environmental (Intermediate) factors if they are to have any effect. Hence, these factors influence the outcome directly. All these factors will thus be analyzed to determine their effect on the outcome variable, which is infant mortality.

Figure 2.2: Illustration of Operational Framework

Background variables Proximate variables Dependent variable



Adapted from: Mosley, W. and L. Chen. (1984) "An Analytical Framework for the Study of Child Survival in Developing Countries", *Population and Development Review* 10: 25-45

As indicated in *Figure 2.2*, socio-economic factors included in this study are province of residence, type of place of residence, maternal education and wealth index. As pointed out earlier, the effect of these factors is supposed to be mediated by intervening variables denoted as proximate variables. These variables are in two categories: bio-demographic and environmental factors. In this study, bio-demographic factors are synonymous with maternal factors. Hence, in subsequent discussions, bio - demographic instead of maternal factors will be used.

DATA AND METHODS

As earlier mentioned, the data used was 2005 Third Rwanda Demographic and Health Survey (RDHS-III). The unit of analysis was children. The Sample size was 8649 children, 7.7 % of which had died in infancy. The main tool of analysis was Cox regression which was used to analyze the effect of various explanatory variables on infant mortality.

Cox regression model is in the form of multivariate life table analysis developed by Cox (1972). The model analyses "survival data" by measuring the time until a certain event happens, in this case, until death takes place. The model combines the strengths of life table and regression techniques hence minimizing their weaknesses. While the traditional life table technique assumes that the conditional probability of dying during a given age interval is the same for all individuals, Cox regression allows for the possibility that the hazard rate of an event (death) may differ between individuals with different socio-economic, bio-demographic or environmental characteristics (covariates). Hence, the effects of covariates are introduced in the life table.

Cox regression is considered to be non parametric because its baseline hazard function is unspecified hence making it more flexible. The model assumes that the time to event and the covariates are related through the following equation.

$$\lambda_i(t) = [\lambda_0(t)]e^{(\beta_1 X_1 + \beta_2 X_2 + \dots + \beta_k X_k)}$$

$$\ln \frac{\lambda(t)}{\lambda_0(t)} = \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_k X_k$$

(Equation 1); Where:

$\lambda_i(t)$: Represents the hazard function at time t for an individual with k (number) of covariates (X 's) which may be either discrete or continuous.

β : This is a vector of coefficients related to specific predictor variables to be estimated (eg maternal education, wealth index,

place of residence etc) $\lambda_0(t)$: is an arbitrary, unspecified baseline hazard function. The function is defined when all explanatory variables in the proportional hazard model take a value of zero. This could be equated to a constant in ordinary least squares regression only that baseline hazard function takes a different value at each time (t). For example in this study, the hazard function will refer to the probability of an infant's death at each point in time (t) during his or her first year of life with k (number) of covariate Z .

The hazard function makes it easy to calculate the relative risks of certain groups in relation to specific baseline groups by exponentiation of the coefficients (by taking their antilogs). That is,

if β is the hazard coefficient, just compute e^β . $\text{Exp}(\beta)$ or e^β represents the risk of dying associated with each predictor variable, relative to the risk for the reference category. The relative risk for the reference category of each covariate is unity. Values greater than unity indicate that the relative risk of dying is greater for this group compared with the reference group, whereas values less than unity indicate a decrease in the risk (Pebley & Stupp 1987; Santow & Bracher 1994).

The regression coefficient indicates the relative effect of the covariate on the hazard function. These coefficients vary around zero.

A positive coefficient increases the value of the hazard function and therefore indicates a negative effect on survival time. A negative coefficient decreases the value of the hazard function and therefore indicates a positive effect on survival time. Therefore, in this study, a positive coefficient indicates a greater probability of hazards risk of infant mortality; and a negative coefficient indicates a smaller hazards risk of infant mortality.

Corresponding to this very special nature of the dependent variable in the hazard model analysis, the SPSS program for estimating this model requires that the data on the dependent variable be dichotomous, indicating whether or not the event (infant death in this study) occurred during the observation period; and a variable giving either the time of the event occurring or the time of censoring (variable status, a new recorded variable). For those infants who did not die by the date of survey (those who survived the observational period), the survival data are censored at the date of survey.

In this study, the hazard function, which is infant mortality is the response variable, while the covariates include the selected socio-economic, bio-demographic and environmental factors. All the covariates are time-constant independent variables. That is, they do not change in value over time.

While chi-square is used to test the goodness of fit model, the output exponential beta ($Exp\beta$) was used as a regression coefficient to predict the hazard function. A variable was considered significantly associated with infant mortality when its p value was below 0.05.

4. DISCUSSION OF RESULTS

This section presents and discusses results of multivariate analysis carried out on the factors associated with infant mortality in Rwanda. By use of Cox regression, a model was fitted to determine the effect of the selected explanatory variables on infant mortality. The focus was on the socio-economic, maternal and environmental factors influencing infant mortality. Results show that, except for province of residence, mother's age at first birth and all environmental factors, all other factors were significantly related to infant mortality. The most significant include type of place of residence, parity and preceding birth interval.

4.1 Socio - economic Factors

Province of Residence

As shown in *Table 4.3*, all the socio-economic variables were significantly associated with infant mortality except province of residence. The non-significance of the province of residence could be attributed to the issue of data used, hence necessitating further investigation specific to provinces and their respective districts.

In the same perspective, unexpected results indicate that children residing in Western province were 5.4% less likely to die compared to those in Kigali city (reference category). This phenomenon is unusual because normally a city is expected to have better public health facilities that would contribute to the reduction of infant mortality more than any other province in the country.

However, part of the explanation of this phenomenon could be that most children in developed cities and towns are left with housemaids while their mothers go to work and these maids are not trained to take care of the children. Therefore, due to inadequate child care in the city, the risk of dying could be elevated. Additionally, Western province is a province that is known for cattle keeping, rich in terms of food stuff and close to Lake Kivu where fishing is one of the occupations of the residents. Hence availability of fish, food and milk (all of which provide nutritional support to children) as well as consistent mother care could be the reasons why infant mortality in this province appears to be lower than in Kigali.

Among the five provinces, the highest risk of dying in infancy is reported in Eastern province with the risk of dying of about 0.26 times higher than in Kigali. South and Northern provinces increased the risk of dying at infancy by 1.037 and 1.047 times respectively compared to Kigali. Hence the results were consistent with provincial differentials in infant mortality found in Kenya (Ikamari 1996; Kiptui 2001; Misati 2003) and Zambia (Madise, Banda & Benaya 2003).

Type of Place of Residence

The results show that the risk of dying in infancy is 1.505 times higher in rural than in urban areas. As expected, the relationship was highly significant and consistent with other studies (Pandey et.al 1998). People in rural areas find it difficult to access health services when they are sick hence increasing their chances of dying (Madise, Banda & Benaya 2003).

Maternal Education

Maternal education is one of the socio-economic variables that behaved as expected. Using mothers with no education as a reference category, the children born to mothers with primary education had 0.169 times lower chance of dying compared to those born to mothers with no education, while the risk of dying for children born to mothers with secondary education and above was 0.402 times lower than that of the reference category. The results are statistically significant and consistent with other studies (Caldwell 1979; Pena, Wall & Persson 2000).

It is worth pointing out that education per se does not contribute to child survival but rather other proximate determinants associated with it such as quality of health care, sanitation and hygienic practices of the mother, her nutritional status and quality of housing among others (Ocholla-Ayayo et al. 2000).

It has also been observed that child survival is not influenced education at all ages. This is confirmed by Boerma and Bicego (1991) in their studies carried out between 1987 and 1990 using data from 17 DHS studies. In their view, education is more associated with infant mortality at post neonatal (after one month of life) stage than neonatal (death with in one month of life) period which is more affected by biological processes.

Table 4.3: Effect of Socio-economic, Bio-demographic and Environmental Variables.

Variable name	β	S.E	$Exp(\beta)$
SOCIO-ECONOMIC FACTORS			
Province of Residence			
1 = Kigali (RC)			1.000
2 = South	0.036	0.146	1.037
3 = West	-0.055	0.144	0.946
4 = North	0.046	0.151	1.047
5 = East	0.227	0.148	1.255
Place of Residence			
1 = Urban (RC)			1.000
2 = Rural	0.409**	0.127	1.505
Maternal education			
1 = No Education (RC)			1.000
2 = Primary	-0.185*	0.086	0.831
3 = Secondary and over	-0.513**	0.182	0.598
Wealth Index			
1 = Low (RC)			1.000
2 = Middle	-0.240*	0.116	0.787
3 = High	0.116	0.095	1.123
BIO-DEMOGRAPHIC FACTORS			
Mother's Age at First Birth			
1 = < 20 years (RC)			1.000
2 = 20-34	-0.095	0.080	0.910
3 = 35+	0.906	0.585	2.474

Children Ever Born

1 = 1 Child(RC)			1.000
2 = 2-3 children	0.992***	0.174	2.697
3 = 4 children and over	1.434***	0.202	4.194

Preceding Birth Interval

1 = < 24 months(RC)			1.000
2 = 24 months and over	-0.602***	0.091	0.548
3 = First births	0.662***	0.140	1.938

ENVIRONMENTAL FACTORS

Source of Drinking Water

1 = Un-piped(RC)			1.000
2 = Piped	-0.134	0.100	0.875

Toilet Facility

1 = No facility (RC)			1.000
2 = Pit, flush toilet	-0.238	0.165	0.788

***: $P < 0.001$, **: $P < 0.01$, *: $P < 0.05$; RC: Reference Category

Wealth Index

Findings of the study also indicated inconsistent relationship between socio-economic status (Measured by wealth index) of the households and infant mortality. High wealth index households reported a higher risk of infant mortality in relation to low wealth index households. Although not statistically significant, this relationship was unexpected. It was rather unusual finding and difficult to explain. Due to their socio-economic status (employment status), high wealth index mothers tend to have very little or no time for their children. Most of the care is provided by house maids.

There is also a possibility that breastfeeding is inconsistent and/or stops earlier than is expected. These factors contribute to high chances of infant deaths. However, similar findings were observed in Kenya (Mustafa & Odimegwu 2008) and Malawi. In his study conducted in Malawi, Doctor (2004) as cited by Mustafa & Odimegwu (2008) attributes these high mortality levels in high wealth index households to HIV/AIDS related mortality.

4.2 Bio-demographic /maternal Factors

Based on Mosley and Chen framework, maternal factors included maternal age at first birth, parity and preceding birth interval. In this study, all other factors had a significant effect on infant mortality except mother's age at first birth.

Maternal Age at First Birth

Although mother's age at first birth was not statistically significant, results were in the expected direction. Children born to mothers aged 20-34 were 9% less likely to die compared to children born to mothers below age 20, while the risk of dying for children born to mothers who were aged 35 and above was 2.474 times higher than that of children born to mothers aged below 20.

Hence a 'U'-shaped relationship emerges where the high risk of infant deaths appears in the extreme age groups (Younger than 20 and older than 35 years). Similar findings have been observed by Akoto and Tambashe (2002) in their studies in different countries of Sub-Saharan Africa.

Children Ever Born

Parity was also a statistically significant factor in predicting infant mortality in Rwanda. The results revealed that the more children born to a mother, the higher the risk of dying of the index child. *Table 4.3* shows a 'J'-shaped pattern of the relationship between parity and infant mortality where the risk of dying of a child born to a mother with 2-3 children was 2.697 times higher than that of a child born to a mother of 1 child, while that of a child born to a mother of 4 children and above was more than fourfold. These results are in line with theoretical expectations and conform to the findings from other studies (Bicego & Ahmed 1996; Akwara 1994).

Preceding Birth Interval

Preceding birth interval emerged as one of the most significant factors affecting infant mortality in Rwanda. *Table 4.3* indicates that preceding birth interval was significantly and negatively associated with infant mortality. Birth intervals of less than 24 months were associated with significantly higher risks of infant mortality than intervals of at least 24 months. Children born at an interval of 24 months and above had a 0.452 times lower risk of dying compared to those born in an interval of less than 24 months. Similar findings have been observed in studies conducted in Kenya (Bwana 1997; Ikamari 1996; Kanampiu 2001)

4.3 Environmental Factors

All environmental factors in this study which included source of drinking water and type of toilet facility were not statistically significant as determinants of infant mortality in Rwanda. However, the results were in a hypothetically expected direction.

Source of Drinking Water

In this study, results show that the risk of dying of infants born in households accessing piped water was about 0.125 times lower than that of infants residing in households using un-piped source of drinking water. As pointed out earlier, this association was not statistically significant indicating that the variation could have just been out of chance. These results therefore contradict with the findings of Jacoby and Wang (2003) and DaVanzo (1988) where water and sanitation facilities are emphasized as significant factors in promoting infant survival.

Type of Toilet Facility

Although type of toilet facility was not significantly associated with infant mortality, results of the study indicate that the risk of dying was higher among children in households with no toilet facility compared to those with pit latrines and flush toilets. Children residing in households with pit latrines and flush toilets had 0.212 times lower chances of dying than children in households with no toilet facility. One can therefore state that existence of toilet facilities had a negative effect on the infant's risk of dying as was hypothesized although the coefficient estimates were not statistically significant in the multivariate context. Similar findings were observed in Kenya (K'Oyugi 2000).

Part of the explanation of the non significance of this variable could be that infants normally do not use these toilets. The relevance of the latter is only for the sanitation of the household and specifically the hygiene of the mother which could be handled by other factors in a different way. Nevertheless, higher risk of death associated with lack of toilet facilities could be explained by unhygienic disposal of excreta and contamination caused by defecation in the bush and other open places (Gyimah 2003).

5. CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

In developing countries, particularly of sub-Saharan Africa, infant mortality rates continue to shoot up not only because of underdevelopment and meagre economic resources, but also due to lack of commitment by governments to give priority to relatively less expensive issues of public health. A mere public awareness campaign on household sanitation and nutritional issues led by public health workers would save millions of infants losing their lives to avoidable diseases every year.

It is worth noting that majority of the women in Rwanda live in rural areas and have not gone beyond primary school level. These two characteristics have indicated higher risks of infant mortality and yet they are the cornerstone of all factors influencing infant mortality in developing countries in general and Rwanda in particular.

Most of the factors known to reduce infant mortality such as birth spacing & breast feeding have deteriorated in the recent past, the latter being common in urban areas. Greater declines in infant mortality could have been achieved if these factors improved substantially.

With regard to the research question, the findings of the study suggest that indeed different factors affect infant mortality at varying degrees. Hence, the type of place of residence, maternal education, children ever born and preceding birth interval were reported to be the major determinants of infant mortality. Among these, bio-demographic factors proved to be the most significant factors associated with the risk of infant mortality in Rwanda.

5.2 Recommendations for Policy

- ◆ Public health programs and interventions should focus on increasing the availability, affordability and accessibility of public health services particularly in rural areas of Rwanda.
- ◆ There is need to promote education of the girl-child in Rwanda
- ◆ Strengthening Family planning in the population policy as well as Information Education and Communication (IEC) on the negative effects of short birth intervals

5.3 Recommendations for Further Research

Further studies are recommended in the following areas:

- ◆ A detailed study on wealth index as a valid tool for measuring socio-economic status in Rwanda.
- ◆ Circumstances under which Province of residence, place of residence and environmental factors elevate or reduce the risk of infant mortality were not very clear. Hence further studies are required, emphasizing the effect of these factors on infant mortality

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FLAT TAX. IS RWANDA PAVING THE WAY OFF THE BEATEN TRACK?

By

Dr. Carpophore Ntagungira

The world has experienced three main types of taxation: head, flat and progressive. The flat tax is between the progressive and head tax. With progressive taxation, the tax rate and the absolute value of the tax increase with income. With flat tax, the tax rate is constant but the absolute value of the levy increases with income. With head tax, the levy is constant and does not depend on income¹. In modern world, progressive taxation is the most widespread but it is being eroded and abandoned in favor of the flat tax.

In 2006, flat tax was proposed by DMS² study as the key solution capable of stimulating Rwanda investments. In 2008, a working document of the Ministry of Finance proposed an integrated flat tax without corporate income tax³. In 2009, Georgia and Rwanda boosted ties on flat tax matters. The collaboration started with the visit of Mr. Lado Gurdenidze former Prime Minister of Georgia (2007-2008). Thereafter in September 2009, Ms. Baine head of Rwanda Revenue Authority visited Tbilisi.

¹ Victoria Price Curzon, *de l'équité de l'imposition proportionnelle*, publication de l'Institut Constant de Rebecque, Lausanne, 2010, p. 1

² Ntagungira Carpophore, *Private Sector Development : Diagnosis & Programme* [2006 – 2008], DMS, Kigali, 2006, 79p

³ Ruhashyankiko Jean-Francois, *An integrated flat tax for Rwanda*, Minecofin Working paper, Kigali, 2008

President Kagame said "We sent our team to Georgia because we learned they have been very successful with their flat tax. . . . We want to see where it works"⁴. During one of his visits to Rwanda Mr. Gurdenidze addressed to government officials on Georgia flat tax experience. He said that if the government of Rwanda makes a few more policy decisions like switching to flat tax, it would then become a very attractive place⁵. In the same year, Rwanda invited proposals from recognized consultancy firms to conduct a study on flat rate tax system for Rwanda.

During the last 12 years, Rwanda has experienced a decrease in tax rate confirming that to increase the number of tax rates is not always in positive correlation with increasing tax revenues. From 1996 to 2008, for example, the reduction of the tax rate on corporate profits has been 3% (annual average) which was translated into an 11% average annual rate of increase of tax revenues during the same period⁶.

The tax reforms were accomplished but measures which made the reforms yield lower results than expected. To achieve the best results, one has to find out a system that imposes the four selected basic principles of every taxation system from one Economic Nobel Laureate namely: "individualism, non-discrimination, neutrality, non-arbitrariness"⁷.

⁴ Anne Jolis, *A Supply-Sider in East Africa, President Paul Kagame Interview*, Wall Street Journal, London April 24, 2010

⁵ Ginanne Brownell, *Rwanda—Road to Recovery*, fDi Magazine, February 17th, 2010

⁶ RRA, Annual Report 2008 and Treatment of revenue collection database from Rwanda Revenue Authority, 1996-2009 and

⁷ Maurice Allais, *L'impôt sur le capital et la réforme monétaire*, Herman, Paris, 1989, p. 36.

The tax principle of individualism means that taxation must not seek equality of conditions, but that of opportunities. The Pareto principle states that, it is a common rule of thumb that "80% of taxes come from 20% of taxpayers."⁶ In Rwanda's case, 52% of tax revenues originating from value added tax should at least come from 1% of the concerned taxpayers but not from 0.1% as it is the case currently⁹. In such a distribution of value added in a country, progressivity has no meaning and flat tax is more convenient.

The principle of non-discriminatory means that tax must be established on rules that are the same to all. Rwanda main applicable rates are as follows: Corporate income tax (0%; 4%; 30%); a progressive personal income tax applied on different brackets of income (0%; 4%; 15%; 20%; 30%); different consumption tax on products (0; 5; 10; 15; 38; 60; 75%; 120%); value added tax (0%; 18%); withholding tax (0; 3%; 5%); surcharge tax (0%; 25%) and import duties (0%; 5%; 15%; 30%)¹⁰. For long time, it is known that, in economy, special treatment so-called "of national interest" is a fictitious notion. States should not modify or influence the most efficient economic choices by tuning on tax rates. Efficiency requires equal treatment in taxation. Concern for efficiency joins concern for justice. "Equality of tax is neutrality of tax"¹¹. Flat taxation fights against discrimination.

⁶ Koch, R. *The 80/20 Principle: The Secret of Achieving More with Less*, Nicholas Brealey Publishing, London, 2001, 234p.

⁹ Treatment of revenue collection database from Rwanda Revenue Authority, 1996-2009

¹⁰ Rwanda Revenue Authority, *Compilation of fiscal Laws and regulations in use*, Kigali, 1998, 527p.

¹¹ Maurice Allais, *L'impôt sur le capital et la réforme monétaire*, Herman, Paris, 1989, p. 36.

With principle of non-arbitrary, tax is according to the same rules for everyone. To achieve this, tax must be levied according to laws, principles and procedures which are simple, clear and which cannot lead to any arbitrariness or multiple interpretations. The determination of the expenditure to be deducted from the revenue for the sole purpose of determining the different taxes rates to be applied is both a trivial and uncertain exercise. It takes more than 90% of time allocated to tax audit. With flat tax, citizen would be able to spend less time trying to understand and comply with hundreds of pages of tax code and spend more time doing important things such as conducting business.

Since 1994, about twenty countries adopted the flat tax system and confirmed the damaging effects of progressivity. If Rwanda adopts to lead with flat tax, it would win with it by increasing tax revenues. Then, the country would move at the first front of the new global tax revolution.

Maurice Allais, *L'impôt sur le capital et la réforme monétaire*, Herman, Paris, 1989, p. 36.

Koch, R. *The 80/20 Principle: The Secret of Achieving More with Less*, Nicholas Brealey Publishing, London, 2001, 234p.

Treatment of revenue collection database from Rwanda Revenue Authority, 1996-2009
Rwanda Revenue Authority, *Compilation of fiscal Laws and regulations in use*, Kigali, 1998, 527p.

Maurice Allais, *op.cit.*, p. 47

**THE IMPORTANCE OF CUSTOMER CARE IN SUCCESSFUL
RUNNING OF A COMPANY
(CASE STUDY OF MTN RWANDA CELL).**

BY

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And

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GENERAL INTRODUCTION

The research is about the importance of customer care in successful running of a business; a case study of MTN Rwanda cell. The aim of the research is the Assessment of customer care, customer satisfaction and its competitiveness in MTN Rwanda cell. The primary objective is to establish if there is a relationship between customer care and success of a business company.

The following specific objectives were considered:

- a) Assessing the relationship between customer care and customer satisfaction,
- b) Identifying and examining the effectiveness of customer care program and its impact in the success of the MTN Rwanda cell,
- c) Assessing the customers' expectations and perceptions of quality service in MTN Rwanda cell and

d) identifying the gap between their expectations and perceptions. Both secondary and primary data sources were employed during this research. Primary data was collected with the help of a questionnaire addressed to both MTN Rwanda cell employees and customers using purposive sampling method. Under secondary data; articles, reports, textbooks, and Internet sources were consulted.

Findings of the research indicate that customer care has a great influence in the successful running of a company, that is to say a good customer care program encourages a good functioning of a company.

BACK GROUND

The telecommunication company MTN Rwanda cell was founded in November 1997 by the shareholders; Rwandatel, Tristal Ltd and MTN group. It obtained its GSM licence in April 1998. The maiden phone call via MTN Rwanda cell Net work was officially done on July 4th 1998.

A service provider should focus on retaining its customer and serving them better.

If done, a company will have a positive impact of matching the performance and customer's expectations. A company will therefore boast of better results like increased sales and turnover.

1.2 PROBLEM STATEMENT AND THE HYPOTHESIS

Enterprises today are facing a growing list of challenges. Continued pressure on profit margins is the need for greater customer service, retention and royalty.

This can later translate into regular rollout of new products, service (including value added advisor of services) and payment mechanism. Every business exists to satisfy customers.

Customer are driven by satisfaction especially in the world today where they have easy access to information.

MTN Company, has had its share in this domain. It experiences complaints especially about un reliable net work.

It is in this context that this research is carried out to assess the weaknesses and strength of MTN Rwanda cell as far as customer care is concerned by asking the following;

Research questions:

1. MTN Rwanda cell does care effectively about its customers?
2. Why do MTN Customers prefer it over other telecommunication companies?

The Hypothesis:

This research focused on verifying the following hypothesis:

- 1 - Is there a relationship between customer care and success of a company.
- 2 - Customers choose MTN Rwanda cell due to its good customer care and quality of service.

OBJECTIVES

This research has the following objectives:

General objective

- Assessment of customer care, customer satisfaction and its competitiveness in MTN Rwanda cell

Specific objectives

- To assess relationship between customer care and customer satisfaction.
- To identify and examine the effectiveness of customer care program and its impact in the success of the MTN Rwanda cell.
- To assess the customers' expectations and perceptions of quality service in MTN Rwanda cell and to identify the gap between their expectations and perceptions

1.4 THE RESEARCH DESIGN

The research design applied in this paper included;

Documentary: It helped the researchers to search in various books, researches, brochures, and others on customer care in MTN Rwanda cell Telecommunication Company

Questionnaires: Which helped the researchers to collect information through well designed, typed and very specific questions.

Interview: This technique helped the researchers to collect information from staff of MTN Rwanda cell and also its customers by asking simple but specific questions.

2. LITERATURE REVIEW

The overall purpose of this review is to identify gaps that this study will fill and contribute in terms of approaches/strategies to better customer care in telecommunication like MTN-Rwanda which offers a variety of services ranging from corporate solutions (post-paid), prepaid, closed user group, Flex, Per second, Pay as You Go, Gongga, MTN-Zone which is newly introduced, MTN-Bonus,

as well as bland solutions which include networking, wimax, internet service.

2.1 Definition of key concepts

Customer:

Many scholars have defined this term differently.

Leo Beans, the founder US Mail Order Company L.L. Beans, define a customer as someone who has needs and it is important for us to meet his needs profitably both for him and for ourselves (Mohamed Zair, 2000: 389,)

Other scholars like Kotler, define a customer as a person who brings us his wants. It is our job to handle them profitably to him and to ourselves according to (Kotler 1992:40)

It therefore turns out that the purpose of every business is to create and keep customers. "It is the customer who determines what the business is for according to (Michael J Baker; 2000)

Care

Care is the particular attention to someone; it is an additional touch to what is good; it is the process of caring for something by providing what is needed (OXFORD: 465)

2.1.1 Customer care

Different scholars have differently defined customer care but they all come to a common consensus that customer care is natural consequence of increased competition and search for sustainable competitive advantage.

The origin of customer care and satisfaction stems from attempts by marketers to enhance the dimensions of after sales services as relationships are said to be long term commitments smart marketers build with valued customers. (Douglas Dalymple, Leonard J.parsons. 1990)

Customer care is an activity or action that adds value to the relationship so that an organisations' customer care programme may consists of a listing of a series of highly specific activities and embraces;

- ◆The product knowledge and interpersonal skills of the employees who interact with customers.
- ◆The type of service required by the customer and their perceptions of how the organisation fulfils their expectation on quality.

The organisational structure of the company, which determines the efficiency with which services (or product) are delivered at all phases from the point of initial contact through the customers post purchase evaluation of service product received.

According (Michael J Baker 2000) Customer care is the extent to which customer expectations about a good or services are matched with actual performance.

Customer care = actual performance by the organisation divided by customer expectations. (Philip Kotler 1980)

Customer care is a concept which emphasises four kinds of distinct activities;

Customer service: This involves advice and information for customers regarding the technical specifications of a product or service and after sales back up arrangements and procedures.

◆ **Product quality:** This relates to standards and measures set to ensure that the product conforms to the specifications.

◆ **Service quality:** This refers to the company /customer interface and relationship, focusing on customers' experiences during the process of the transaction.

After sales service: This covers after-sales inquiries and complaints, together with repair and maintenance procedures (Dennis Adock, Althalborg, Caroline Ross. 2001)

2.1.2 Customer service

Customer service is the service provided in support of a company's core products, It often includes answering questions, taking orders, dealing with customer issues and handling complaints. Customer service can occur on site (as when an employee helps a customer find a desired item or answers a questions), or it can occur over the phone or via internet.

It should however not be confused with the services provided for sale by company. (Ekanayaka and Currie, 2002:47)

2.1.3 Customer satisfaction

The customer satisfaction is the customer's fulfilment response. It is a judgement that a product or a service feature, or the product or service itself, provides a pleasurable level of consumption related to its fulfilment. According to (Michael J baker, p. 512)

Satisfaction is the good feeling that someone has when a need or desire is achieved.

(OXFORD, Advanced learners dictionary, 6th edition,)

Adrian Thompson outlines seven steps to achieve customer satisfaction: <http://www.sitepoint.com/article/satisfaction-7-steps>, 19/06/09)

- **Encourage face to face dealings:** customers find it easier to relate to work with someone they relate with in person;
- **Respond to messages promptly and keep client informed:** It is always important to inform customers about their queries and assure them that it is being addressed.
- **Be friendly and approachable:** In hospital industry environment, it is important to be friendly, courteous and to show clients that the company is there to help them out.
- **Have a clearly defined customer service policy:** a clearly defined customer service policy helps the company to save time and effort in the long run.
- **Attention to detail:** also known as "the little niceties" by sending for example greetings cards, an e-mail,..., this shows how the company cares and most importantly it makes the customer feel welcomed ,wanted and valued
- **Anticipate the client's needs:** Companies must always pay attention to what the customers want and make every effort to please and impress them.
- **Honour promises:** Companies must derive what it promises between the deadlines contracted as long as customers do not like to be disappointed.

Strong customer connections build loyalty and drive repeat purchases and recommendation of the brand to others. (Microsoft, customer care Framework 2008: 2007,2)

2.1.4 Customer expectations

The needs of customer satisfaction are planted in the pre-purchase phase, when consumers develop expectations or belief about what they expect to receive from the product or service.

Ideally, a business organisation should exceed its customer's expectation, thereby maximizing the satisfaction of its customers, and also the credibility of its good and services in the eyes of its customers.

(<http://www.businessballs.com/crmcustomerrelationshipmanagement.htm> 19/06/2009,)

The expectations of different customers for the same product or service will vary according to social and demographic factors, economic situation, educational standards, competitor products, experience. Therefore, given all these variable factors, it is no surprise that one size certainly does not fit all. In that context, companies must always ask customers what is important to them, why customers do business with the company and therefore work hard to satisfy them.

(<http://www.businessballs.com/crmcustomerrelationshipmanagement.htm>,
19/06/2009)

2.1.5 Cautions in measuring Customer Satisfaction

Customers rate their satisfaction with an element of the company's performance say, delivery. The company needs to recognize that customers vary in how they define good delivery .It could mean early delivery, on-time delivery order completeness, and so on. Yet if the company had to spell out every element in detail customers would face a huge questionnaire.

It is possible to measure satisfaction in a manner that is subjective or objective .The subjective manner involves investigations that one would ask the customer to express his/her degree of satisfaction. On the other hand the objective measure seeks a follow up of the indicators of dissatisfaction cases and their origins or causes.

When a consumer is faced with the problem of dissatisfaction, the following alternative reactions take place:

- ◆ **Silence/inaction:** The consumer makes no reaction at all.
- ◆ **The consultation:** The consumer demands more information from the supplier or his representative.
- ◆ **Complaints to the concerned company:** They may be in written form or any other official manifestation.
- ◆ **Pressure and menace to the concerned company:** The pressure and menace may take various forms like communicating the product or service badly to others, refusing to pay for the product and making complaints to public organisations.

Taking legal action: The consumer takes a legal action against the company.

He also gives three approaches for conceptualizing and measuring consumer satisfaction

The first approach relates the general level of satisfaction or dissatisfaction manifested by the consumer to the degree of appreciation by the consumer to fulfilment or failure of the expectation.

- ◆ The second approach relates satisfaction level to the psychological distance between a certain product and an ideal product expected by individual and which can be put in multi-dimensional spaces where each of the dimensions represents a product attribute.
- ◆ The third approach tries to define the consumption well being of an individual by a direct and subjective measure based on the respondents own evaluation about satisfaction or dissatisfaction to certain products or services. (Christian Dussart, 1993)

2.2 Methods of measuring customer satisfaction

♦ **Customer complaints and suggestions system:** Most customer centered companies would make it easy for its customers to deliver suggestions and complaints, and therefore, use suggestion box to facilitate customers to submit their claims. For example, hotels provide forms for guests to report their likes and dislikes, others use suggestion boxes.

This information is a source of various good ideas that shall help the company to address challenges.

Customer satisfaction survey: We can not conclude by 100% that a company can get full picture of customer satisfaction and dissatisfaction only through complaints and suggestions. Because customers may feel that their complaints are minor or they will be made to feel stupid or no remedy will be provided.

In this case customers stop buying or switch to other supplies instead of complaining. Companies can not therefore use complaints alone to measure customer satisfaction but period surveys must be conducted in addition to obtain a direct measure of satisfaction.

Maintaining customers: Companies are not only seeking to improve their relationship with their partners in the supply chain they are developing stronger loyalty to their ultimate customers. In the past, many companies took their customers for granted. They did not either have many alternative suppliers or market was growing so fast that the company did not worry about fully satisfying its customers.

The company could lose 100 customers a week, gain 100 and consider sales to be satisfactory. But this situation involves higher cost than if the company maintains all the 100 customers and does not acquire new ones.

Need to maintain customers: Companies are going out to maintain their customers because the cost of winning a new customer may be 5 times the cost of keeping a current customer happy. Offensive marketing costs much more than defensive marketing as it requires much effort and cost to induce satisfied customers to switch away from their current suppliers.

Lost customers analysis: Companies should contact customers who have stopped or who switched to the other suppliers with the aim of learning why this happened. If the company loses a customer it must learn where it failed. It could be in pricing system or other. (Phillip Kotler, Marketing Management. 7th Edition, 1990)

2.2.1 Building customer satisfaction through quality and service value

- ◆ The only ways that companies can go about winning, maintaining customers and therefore outperforming competition is by giving a better job and satisfies customers' needs. Companies should therefore pay high attention to marketing theories and practices because this is not a monopolistic environment.
- ◆ In buyer markets on the other hand, companies have to know that today consumers are much more informed and demanding. They are to choose from a large array of products and services. This job should not be left to the marketing department alone. No marketing department can sell products which fail to meet customers' needs.

It therefore calls for team work in company employees to design and implement a competitively superior customer value and delivery system. (Joseph P. Guiltinan. 4th Edition 1990)

2.3 Service characteristics and their marketing implications

Services have a number of unique characteristics that make them so different from products and also pose challenges to marketers. Some of the commonly accepted characteristics are the following;

2.3.1 Intangibility

It indicates that a service has no physical attributes and as a result it is impossible for the customers to taste, feel, see hear or smell before buying.

Intangibility is the main factor that makes difference between services and goods and is the key determining whether or not an offering is service or product. This characteristic has profound effect on the marketing of services.

◆ **Marketing implication:** Difficulties arise from this intangibility, which lead to control challenges for the producer and evaluation problems for the consumer (impossible to taste, feel before the purchase). In that context the marketer may attempt to reduce the level of difficulty to which the characteristic of intangibility gives rise for example by increasing the level of intangibility, focus the attention of customer upon the principle benefit of consumption, differentiating the service and building up its reputation. according to (Mbabazi cossy, 2008:29-30).

2.3.2 Inseparability

Services are typically produced and consumed simultaneously and cannot be separated from the creator or seller.

If a person renders the service, then the provider is part of the service since the client is also present as the service is produced, provider and the client interaction is a special features of service marketing. Both the provider and the client affect the service outcome.

Marketing implication: The importance of establishing values which place emphasis on excellence and customer orientation must be analysed. Effective customer service training will emphasize the need for quality, reliability and service. (Mbabazi cosy 2008:29-30)

2.3.3 Heterogeneity (variability)

It indicates that each unit of service is some how different from other units. Services are highly variable and depend on who provides the service and where they are provided. Service buyers are aware of this high variability and frequently talk to others before selecting a service provider.

Marketing implication: There is a need to assure quality control through three steps which are:

- Investing in effective staff selection, training and motivation;
- Standardizing the service performance process through the organisation, helped by preparing a service blueprint that depicts the service events and process in a flow chart with the objective of reorganizing potential service fail point;
- Monitoring of customer satisfaction through suggestions and complaints systems. (Ibidem :30)

2.3.4 Perishability

Perishability is a service characteristic indicating that a service cannot be stored or reserved for future use. (M.s.sommers Barnes and Stanton, 1992)The market and demand for services fluctuate considerably and this affects firms.

Marketing implication: The operating management process may attempt to optimize the relationship between supply and demand. For instance, using pricing variation to encourage off-peak demand; discouraging demand during peak times and using promotions to stimulate off-peak demand. (Mbabazi cossy, p31)

2.3.5 Ownership

Ownership is being in total possession and free to exercise one's authority over something. The purchase of service may only confer upon the customer, the access to use or not to use the facility. The customer does not obtain ownership of facility unlike the case of purchasing a tangible product in which there is transfer for title and control over the use of item.

Marketing implication : There are at least three alternatives to the marketers:

- Promoting the advantage of non-ownership;
- Making available to the customer a tangible symbol of representation;
- Increasing the chance of ownership; for example in case of rental service. (Micomyiza Mathilde: 20)

2.3.6 Managing customer care

Customer care is a crucial element of business success. Every contact between customer and a business is an opportunity for the company to improve its reputation with them and increase the likelihood of further sales.

Despite much effort to satisfy customers, companies often face problem to deliver a quality service and to meet customer expectation. Some of those problems are:

Staff problem

This problem normally occurs when staff is incompetent and not qualified, this means they do not know how to properly deliver the services; they don't have a clear job description; shortage of manpower to effectively and efficiently effect the company's goal; the company's poorly rewarded staff who may hinder the smooth delivery of the customer service set standards.

Customer problems

In many cases a customer becomes a source of problems when he/she is not satisfied by the service or product, when there is no clear customer care policy and when they ignore the organisation procedure of resolving customers' problems.

Functional problems

This is mainly a result of rigid operational procedures which are negative to business success, unconcerned management, inadequate equipment, absence of a written visible statement relating to the mission and the goal of the company and insufficient level of computerisation.

Communication problems

- ◆ The availability of many channels of communication and product delivery means that communication is critical. Therefore communication problems arise when:
 - ◇ Companies don't have good channels of communication that provide and promote the companies' products.
 - ◇ Absence of bad interaction between policy makers, company managers and staff who are directly in contact with customers.
 - ◇ Lack of information on the product, service or events that are organised.

2.4 Complaints procedure

A complaint is an expression of dissatisfaction requiring a response.

Companies have the obligation to discover what customers want so as to improve and shape their business. Most of the time, this happens through customers' complaints. In that context complaints should be embraced and encouraged even if it can be stressful for both sides; the customers and the company staff. Complaints can be verbal or written;

Verbal complaints

When customers make a verbal complaint, they are expecting a quick feedback. Early action is the key to resolve issues with minimum fuss.

Written complaints

These are complaints made through writing. A company has to set a form for written complaints and a suggestion box. The quick response and correction of these complaints determines if they were taken seriously and how it can meet the customers' needs.

2.4.1 Why customer care in telecommunication companies

We all prefer someone to smile while attending to us. This usually leads to better results of;

- ◊ Better sales growth
- ◊ Higher market share

Customer care focuses on the purposes of the service thus satisfying customer needs profitably.

The sales person may exhibit poor presentational skills, conduct himself poorly or dress inappropriately.

All these and others may influence customers' perception of service quality. It is also believed that personality has some influence on a person's perception, attitude and beliefs. The intensive involvement of humans in service delivery will always have the potential to pose problems for quality. Understanding how people develop their perceptions can help to be more successful in business.

Inadequate service to intermediate on internal customers.

(MC Graw-hill, Valerie A. Zecthaml Mary, 2003)

The frontline employee is by definition the "sharp" end of the service delivery system to execute the service effectively, the employee requires proper support from the organisation. The support will emanate from the management functions like operations, marketing resources which involve

- ◊ Equipment e.g. materials
- ◊ Skills training
- ◊ Information e.g. a new service launch and operation procedure.

2.4.3 How to improve customer perception on customer care

Improving the quality of customer care will have implications on the culture of the organisation.

Customer care can be improved by identifying primary quality determinants. However, consumers and producers of products and services do not necessarily perceive customer care on common dimensions, they evaluate them differently. Consumer perception of customer care can as well be improved by managing customer expectations. Companies make promises to customers on aspects of their businesses that the customers will value in order to give the organisation a competitive advantage.

Customers are interested in several aspects relating to architecture and design for promoting an image.(Phillip Kotler, 1980) Similarly, atmosphere influences image in form of conscious design of space to influence buyers. The atmosphere influences the buyers' expectations and perceptions of customer care. Various factors like design, quality, appearance, price, knowledge and service evoke a variety of feelings about an organisation.

Follow up and service create goodwill between sales person and the customer which in the long run will increase sales faster relative to the sales person (company) who does not provide such service. By contacting the customer after the sale to see that maximum benefit is being derived from the purchase, a salesperson lays the foundation for customer satisfaction and a positive business relationship. (Michael J. Baker, 2000)

A person who delivers the product/service is of key importance to both the customers he serves and employer he represents. To the customers he is in fact part of the product or service.

It gives a customer an opportunity of meeting the providers of the product/service. Judgement about service quality may be made from the appearance of the service provider. It is at this point that impressions are formed which is subsequently converted into feelings, beliefs and perhaps lasting images.

(Michael J. Baker , 2000)

2.4.4 Customer friendly approach

One commonality among all companies or organisations that provide good service is the development of a system and attitude promoting customer friendly service. "Customer friendly" means viewing the customer as one of the most important part of your job.

Two critical qualities to the customer friendly approach are:

- ◊ Communication
- ◊ Relationships

The two main tasks of successful customer relations are to communicate and develop relationships. Communicating with customers and developing relationships with customers are perhaps the two most important qualities in customer service.

2.4.5 Profession qualities in customer service.

Professionals who constantly deal with customers inside and outside the company need to strive for certain qualities to help them answer customer needs. The professional qualities of a service to be emphasised always relate to the customers' wants

- ◊ Friendliness: the most basic and associated with courtesy and politeness
- ◊ Empathy: the customer needs to know that the service provider appreciates their wants and circumstances
- ◊ Fairness: the customer wants to feel they receive adequate attention and reasonable answers
- ◊ Control: the customer wants to feel his/her wants and inputs have influence on the outcome.
- ◊ Alternatives: most customers want choice and flexibility from service. They want to know there are many avenues that satisfy them.
- ◊ Information: customers want to know about products and services in a pertinent and time - sensitive manner. It's important for the customer service employees to have information about their products and services.

IN SUMMARY

Organisations in general take a short run of the business when it comes to performance evaluation. Management is frequently required to meet target on an annual basis. The obsession inevitably becomes one of the cost reduction and productivity increases to meet profit targets. This is understandable but detrimental to building a service quality in the long term. Communication is very important; it reveals the care the organisation has for its clients.

3. CUSTOMER CARE IN MTN RWANDA

3.1 The MTN Rwanda

It's now Eleven years since MTN group set foot in Rwanda; becoming the first mobile operator in the country. No doubt that MTN Rwanda (Eleven) – year existence has been one to be proud of and indeed centred on building a strong bond between the company and the clients.

Before MTN arrived in Rwanda there were only 7,000 telephone lines in the country.

At present MTN now provides service to more than 1,400,000 subscribers and has achieved coverage in all major urban areas and parts of the rural areas.

MTN-Rwanda is a private owned company incorporated in Rwanda in November in 1997. The Company received its GSM license in April 1998. The first mobile call on MTN Rwanda network was officially made on 4/7/1998 then Rwandan Liberation Day. This marked the start of the milestone journey.

At present MTN now provides services to an estimated one million subscribers as by the end of 2008.

Company mission, vision and objectives

Mission

MTN Rwanda mission is to address the needs of customers by providing high quality, innovative affordable telecommunication services.

Vision

The corporate vision is to be the leading provider of quality, innovative telecommunication services in the region.

Objectives

MTN objectives in Rwanda are;

- To change the life style of Rwandans through the use of new technology.
- To accelerate customer acquisition through mobile penetration.
- To assure the use of network coverage in all major places country wide.
- To establish a world quality network comparable to major networks in the world.
- To establish a national distribution network comprising of MTN service centres.
- To establish a modernized world class and efficient call center that handles all sorts of customer queries.
- To build an international gate, translating in cheap international call rate to her customers.

- To support the local community in a number of projects as part of its social responsibility.
- To contribute significantly to human resource development in the country through well conceived and implementation of staff training programs.

MTN sponsorship

Apart from sports and social needs of the communities like street children, MTN has supported several government initiatives, NGO's like those dealing in environment, HIV/AIDS not to forget its contribution to education and agricultural sectors.

The company recently donated 4000,000,000 Rwf (Cross check this figure) to aid the flood victims, a sponsorship that was channelled through the office of the Rwandan Prime Minister's office.

MTN has made significant contribution to the economic development through taxes being ranked Number one (Not Bralirwa?) best tax payer in the country three consecutive years (Which years?) and being more compliant and broadening the entrepreneurial skills of Rwandans.

3.4 MTN Tuvugane and village phone

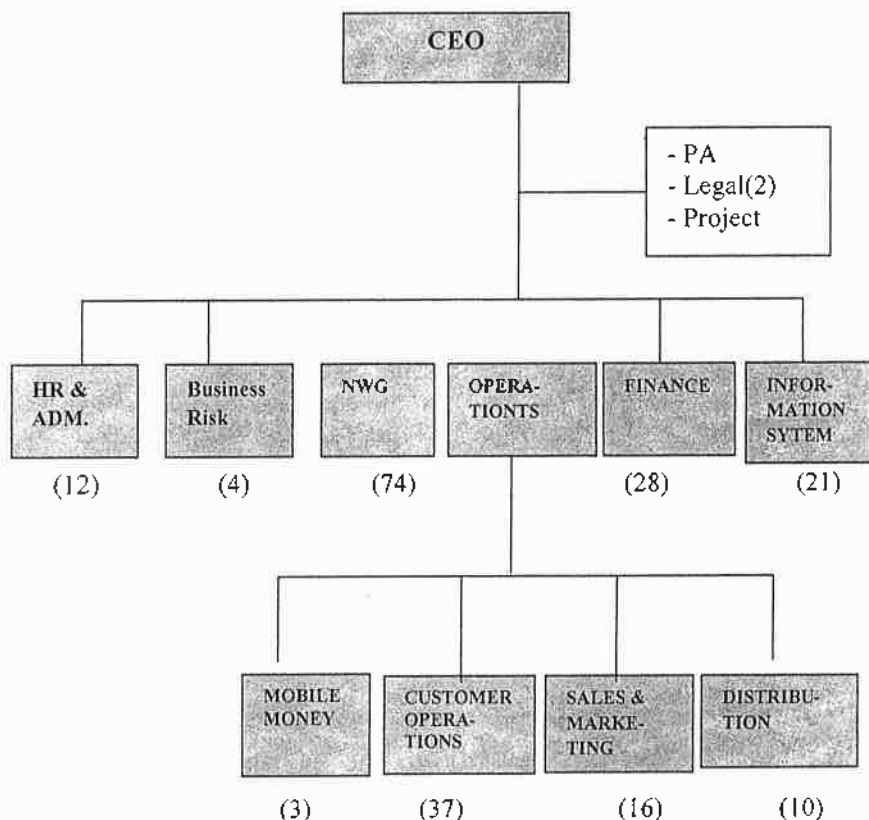
A few years ago (Which year specifically?) saw the launch of a community pay phone dabbled *Tuvugane* with a principle purpose of developing communication in rural communities. This facility is for low income earners, a perfect match to the rural traders.

MTN call center: systems

MTN Rwanda cell has invested heavily in systems used to administer and manage the customer operations.

Over the years, new systems were launched; the Rockwell systems and the other was an upgrade of the billing system for the post – paid customers. These systems are designed to benefit both the external and internal customers. The company tries as much as possible to have enough staff member available to answer customer queries whenever need be.

Figure 1: MTN RWANDA ORGANISATION STRUCTURE



Source: Secondary data, www.mtn.co.rw, October 2009.

This organisation structure shows how MTN Rwanda cell officials are ranked from top to bottom, that's is from CEO to distribution department officer.

3.6 Attracting customers

Today's customers are becoming harder to please. They are smaller; more price conscious more demanding, less forgiving, and they have a variety of alternatives. The challenge, according to **Gitomer, (1997:46)**, is not to produce satisfied customer; several competitors can do this. The challenge is to produce delighted and loyal customers.

3.6.1 Need for Customer Retention

A highly satisfied customer stays loyal for a longer time, buys more as the company introduces new products, pays less attention to competing brands and is less sensitive to price. He offers products or services ideas to the company, and costs less to serve.

Some companies think they are getting a sense of customer satisfaction by tallying customer's complaints, but 96% of dissatisfied customers don't complain; they keep quiet. So the best thing a company can do is to make it easy for the customer to complain. Suggestion forms and toll - free numbers and e-mail address serve this purpose.

Then companies must respond quickly and constructively to the complaints of the customers who register complaints; between 54% and 70% of customers will do the business again with the organisation if their complaints are attended to.

Who is a customer?

A customer is the most important person ever in the office, in person or by mail.

A customer is not dependent on us, we are depending on him.

A customer is not an interruption of our work; he is the purpose of it. We are not doing a favour by serving him; he is doing us a favour by giving us the opportunity to do so.

A customer is not someone to argue or match wits with. Nobody ever won an argument with a customer.

A customer is a person who brings us his wants. It is our task to hand them excellent service, this is profitable for him and us.

Today, more companies are recognising the importance of satisfying and retaining customers. Satisfied customers constitute the company's relationship capital. If the company were to be sold, the acquiring company would not only have to pay for the plant, equipment and brand name but also for the derived customer base, namely, the value and number of customers who would do business with the new firm. Here are some interesting factors bearing on customers' retention;

- ◆ Acquiring new customers can cost five times more than the cost involved in retaining customers. It requires a great deal of effort to induce satisfied customers to switch away from their current suppliers.

- ◆ The average company loses 10% of its customers every year. The customer profit rate tends to increase over the life of the retained customer.

3.6.2 Major uses of marketing research

As marketers become more competitive, marketing research is being called upon to perform an ever increasing range of tasks.

Some of the more important specific marketing research activities are listed below;

⇒ **Research about customers;** research is undertaken to learn what underlying needs individuals seek to satisfy when they purchase goods and services. Identifying needs that are currently being met by existing products spurs new product development. Needs should be distinguished from expectations and a variety of qualitative techniques are to study the often complex sets of expectations that customers have with respect to a purchase e.g. when buying a personal computer, what design is preferable?

⇒ **Customer survey;** this basically means keeping in touch with customers, it should be done on a regular basis. Surveys can have the dual function of proving valuable company information as well as making the customers feel that their feelings are made known to the company in the right way.

⇒ **Customer panels;** these are often used to assess the effectiveness of the company's marketing strategy, e.g. whether its advertising has been well-received by the targeted audience, or a price reduction was efficient enough to attract customers. Customer panels are also use to provide information about proposed new product launches.

⇒ **Similar industry studies;** by researching about other companies in related business sectors, marketing managers can learn a lot about how to improve their own marketing effectiveness. Through a process called "benchmarking" an organisation can set itself targets based on the best practices in its own or related industry.

⇒ **Key client studies;** where a company derives majority of its income from just a small number of customers, it may make special efforts to ensure that these customers are totally satisfied with its standard of services and prices. The loss of their business as a result of shortcomings could be highly catastrophic. In some cases, the relationship with key customers may be of such mutual importance that each partner may spend considerable time jointly researching shared problems e.g. airport operators sharing with the airlines the task of researching customers' perceptions of the airport's handling procedures.

Employee research; for many service organisations, front line employees are close to customers and are a valuable source of information on what the needs of customers are. Research can also focus on employees as 'customers' of an organisation e.g. by measuring their attitude towards the company. Employees' suggestion schemes can form an important research into the employees.

3.6.3 Customers classification by satisfaction and mobility

It has been found that some customers are, by native tendency, more likely to move while others are not. Therefore, even for the same level of satisfaction or dissatisfaction, some customers will remain with the brand they are loyal to while others will switch, simply because, they are more prone to taking risks and more easily susceptible to the blandishment of competitors and are inherent more fickle.

This can be represented in four –way matrix as given below;

Table 4: Satisfaction of a product/ service

(1)SAFE CUSTOMER	(2) HABITUAL SWITCHERS
(3) THE PATIENT ONES	(4) HIGH RISE

LOW

HIGH

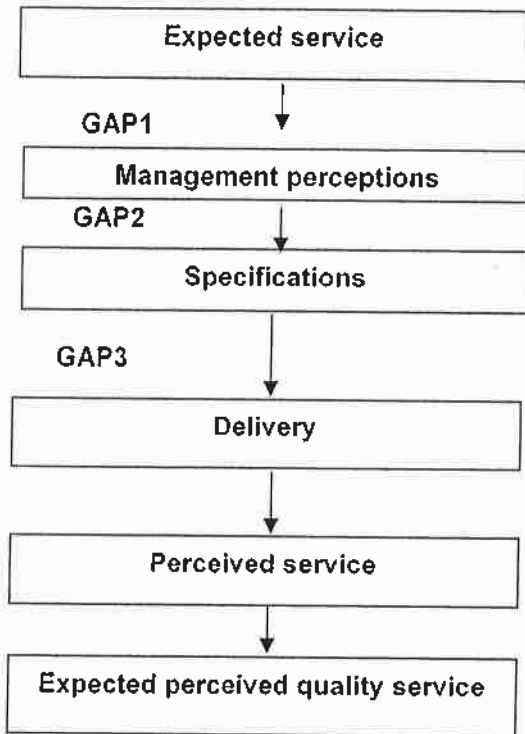
Source: *Mulisa rose; Evaluation of customer satisfaction of communication Industry in Rwanda, (dissertation), pp.23*

1. The safe customers are those who are satisfied and not likely to move. they must be assiduously cultivated.
2. The habitual switches are happy and still likely to switch. They have to be fought with a very possible trick in the book. One has to continuously emphasizes according to some theorists, the economical value to them of staying on versus switching.
3. The patience ones will stay on regardless but should be taken for granted. There satisfaction can be improved profitably, as they are inherent less likely to switch.
4. The marketer is most vulnerable with the last category of people who not satisfied and also likely move

3.7 Gap analysis mode.

Gap analysis model identifies 4 gaps that cause unsuccessful services delivery and the 5th one that closes them. It was developed by **Parasuraman, Zeithamal**

Figure 2: Gap model



Source: Secondary data, October 2009

GAP1. Gap between customer expectation and management perception

This gap means that the management perceives the quality expectation differently from what customers themselves expect. Sometimes management does not always perceive correctly what customers want.

This gap can be closed in the following;

To carry out research so that customers can easily be understood as well as changing the organisation structure.

2- It may be necessary to improve the various internal information channels

GAP2. Gap between management and perception and service quality specification.

This gap occurs when there is discrepancy between management perception and translation of those perceptions into service quality attributes. This gap may occur because management might not send quality standards.

This gap may be closed to the following ways;

1. Increase the company commitment to services quality to rank high on the priority list of management.
2. Those providing the service have to be motivated to feel commitment to the specification.

GAP3. Gap between service quality specification and delivery

This gap means that the quality specification is not met by the performance in the service production and delivery process. Even where the specifications are perfect for performing a service well, service delivery may not be of appropriate quality due to a number of factors that may affect service delivery.

Ways of closing this gap;

1. Improves supervision
2. Motivation of employees to respond to management demands
3. Introduce technology and systems that facilitates performance according to specification.

GAP4. Gap between delivery and perceived quality

This gap means that the delivered services are not consistent with perceived services. This gap is really a sum of the previous gap. It will always occur whenever one or more gaps occur.

This gap results in negative confirmed quality (bad quality) and the quality problem.

This gap may of course also be positively confirmed quality or over quality. When a perceived service quality occurs, the reason for this could be of this discussed earlier or combination of them.

3.7.1 *Installing customer care in minds*

In MTN Rwanda cell, from the front office to the back office, every body embodies a memorable, positive service, so unique, that it impresses the customer and leaves him with a smile on his face and a story to tell.

Customer care must not only be part of job description but it must be in every staff mind and to achieve this, there is need for training and the establishment of clear customer Care policy.

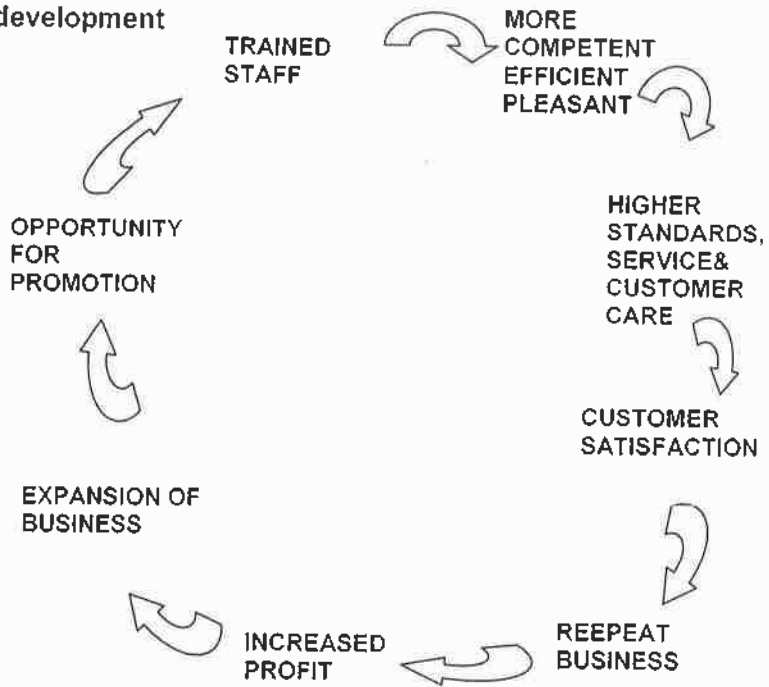
3.7.2 *Installing customer care in minds by training*

Since its inception in Rwanda, MTN Rwanda cell, trainings emphasising the need for communication have been given to staff for the improvement of service delivery.

Through training, the vision, mission and goals of MTN Rwanda cell is then served and inculcated in staff's mind. When these become owned by the staff, then his loyalty to the MTN Rwanda cell becomes better.

The importance training in MTN Rwanda cell is that it helps its staff to build better communication skills, to develop hidden talent, to provide greater focus and therefore handle customers more delicately as illustrated in the figure below;

Figure 3: The value of Training to staff and company development



Source: Secondary data, Kenya "Utali College", training program 2007, p.2

Training help the staff to do better what was good, improve and understand there cause; like shown in the table below:

Table 5: Service's improvement through training

It is Good	It is Better
Customers should be acknowledged on entering the reception area.	Customers should be acknowledged within 30 seconds of entering the reception area and greeted by name.
Incoming calls should be answered promptly	Every call is important; all incoming calls should be answered within three rings.

Source: The Chartered Institute of Marketing, Customer Service Programme, 2004 : 7

Sample size

From the Cochran's table which is in appendix 2, the corrected sample size is 96 respondents. To get the corrected sample size we used Cochran's formula whereby

$$N_c = \frac{n}{1+n/N}$$
$$N_c = \frac{n \cdot N}{N+n}$$
$$N_c = \frac{96 \cdot 1,400,400}{1,400,400+96} = \frac{134,438,400}{1,400,496} = 95.99$$

Where N: Population (1,400,400)

n: Sample size (96)

nc: Corrected sample size (96)

These 96 respondents are of two categories that is 36 MTN Employees and 60 subscribers chosen randomly.

Table 6: Composition of the sample

Category	N° of Respondents	%
MTN Staff	36	37.5
MTN Customers	60	62.5
TOTAL	96	100

Source: Primary data, October 2009

From the table, the number of customer's respondents is much bigger than the number of staff respondents. The percentage of MTN staff is 37.5% while the customers percentage is almost high than other, and it is 62.5%. This implies that MTN as a company has a task to recruiting more staff to ensure that customers are served cared for effectively.

The choice of respondents was based on population in each category. MTN Rwanda cell staffs, questionnaires were only distributed to the individuals having the required information by the researcher which were; senior manager customer operations, Customer events Administration supervisions, credit controller supervision, Data solution supervision. Where as; towards customers (clients) and dealers; distribution of questionnaires was conducted for the entire research.

Partial Conclusion

Research made in MTN Rwanda cell proved that services offered and caring about customers are the main competitive tools which attract customers to this telecommunications company. But still, there is room for improvement in customer care delivery.

4. FINDINGS AND INTERPRETATION OF DATA

This chapter presents findings from customer and MTN employees on the importance of customer care in running the company. The empirical data was examined and analysed in an attempt to establish the grounds for assessing the research.

Tables were mainly used and in most instances they have been described in percentages.

Questionnaires addressed to the MTN Employees

This part shows different responses given by different respondents and the personal observation of the researcher.

Table 1: Respondents by sex

Responses	N° Respondents	Percentages
Male	20	55.6
Female	16	44.4
Total	36	100

Source: Primary data, October 2009

The majority of the respondents were male with a percentage of 55.6% as opposed to 44.4% of the respondents who were female.

Table 2: Respondents' level of education

Responses	N° Respondents	Percentages
Primary certificate	0	0
Secondary	30	83.3
University	6	1.7
Others	0	0
Total	36	100

Source: Primary data, October 2009

83.3% of respondents possess a secondary certificate, while 1.7% possess a university degree, meaning that most of the employees are secondary certificate holders.

Table 3: Respondents' period of stay and quality offered by the company

Responses	N° of Respondents	Percentages
0-1 year	5	13.9
1-3 years	10	27.8
4-6 years	15	41.7
Above 6 years	6	16.7
Total	36	100

Source: Primary data, October 2009

Based on the table above, 41.7% respondents they have been working for the company between 4-6 years which means that they are experienced, hence one can not hesitate to conclude that service rendering is good due to experience they have concerning communication issues.

Table 4: Respondents response on training attendance

Responses	N° of Respondents	Percentages
Yes	20	55.6
No	16	44.4
Total	36	100

Source: Primary data, October 2009

The researcher found out that 55.6% of MTN employees attended training and 44.4% did not attend. This has a big impact on the operation of the company

Table 5: Respondents views on types of training attended

Responses	N° of Respondents	Percentages
Customer care	10	50
Handle equipment	4	20
Other training	6	30
Total	20	100

Source: Primary data, October 2009

From the above table, those who attended the training, 50% attended training on customer care, while 20% attended training on equipment handling, and 30% attended training on the fields.

Table 6: Respondents view on Customer care responsibility

Responses	N° of Respondents	Percentages
Yes	30	83.3
No	6	16.7
Total	36	100

Source: Primary data, October 2009

About this question, if customer care was part of their responsibility, 83.3% said that it was part of their responsibility and 16.7% said that it was not part of their responsibility. Through this table 83.3% are conscious that customer care is their responsibility and they have to serve customers as a king.

Table 7: Respondents views on communication barrier with customers

Responses	N° of Respondents	Percentages
Yes	20	55.6
No	16	44.4
Total	36	100

Source: Primary data, October 2009

From this table, 55.6% of the respondents said that there is a communication barrier with customers while 44.4% said that there is no communication barrier with customers. It was found that an MTN employee needs training in effective communication.

On the question of how MTN can improve on its customer care delivery:

- ◆ 24 hour customer outlet
- ◆ Quick responses to customer problems
- ◆ Staff motivation
- ◆ Staff training and exposure

***On what they like to be improved as regards to quality of services of the MTN Rwanda cell;**

- ◆ Better understanding of the return on investment of a good customer management motivating staff and management to go for it.
- ◆ Give priority to the demand of customers.

Basing on the above information, one can say that MTN must give value to customer's suggestions.

Questionnaires addressed to the MTN customers

This part of questionnaire shows different Responses; of different sexes. They are both closed and open questions. The male respondents were more than the female.

Table 8: Distribution of respondents according to their sex

Responses	N° of Respondents	Percentages
Male	35	58.3
Female	25	41.7
Total	60	100

Source: Primary data, October 2009

The table shows that male respondents constitute a big part of the subscribers of MTN Rwanda, as they make up 58.3% of all subscribers.

Table 9: Respondents response about the time they have consumed MTN services

Responses	N° of Respondents	Percentages
1 day to 3 weeks	5	8.3
1 month	15	25
Above a month	40	66.7
Total	60	100

Source: Primary data, October 2009

From the above table, it shows that 66.7% of clients have been consuming MTN Rwanda services for more than a month, while 25% consumed these services for one month and 8.3% between one day and three weeks.

Table 10: Whether quality of services at MTN makes them loyal

Responses	N° of Respondents	Percentages
Yes	25	41.7
No	35	58.3
Total	60	100

Source: Primary data, October 2009

It is found that, 58.3% of respondents are consuming services of MTN Rwanda not because of services provided by the company, which means that they are not satisfied by services derived by MTN, while 41.7% agreed that they have been consuming MTN services because of its services.

Table 11: Respondents distribution according to their reason of choosing MTN Rwanda

Responses	N° of Responses	Percentages
Better services	10	16.7
Good reputation	0	0
Low cost	10	16.7
Location	0	0
Company direction	0	0
Others	40	66.7
Total	60	100.1

Source: Primary data, October 2009

66.7% respondents chose MTN Rwanda because it was the only company offering communication services, which means that MTN is prone to competition. 6.7% said that they chosen MTN because of its better service, and 16.7% also said that they chosen MTN because of its low cost.

Table 12: Distribution of Respondents according to their rating on services offered by MTN Rwanda.

Responses	N° of Respondents	Percentages
Excellent	0	0
Very good	2	3.3
Good	25	41.7
Bad	30	50
Very bad	3	5
Total	60	100

Source: Primary data, October 2009

From the above table, it is clear that respondents are not happy with service delivered by MTN Rwanda as 50% of respondents claimed services to bad, while 41.7% claimed to be good, while 5% claimed to very bad and 3.3% said their services are very good, this means that MTN Rwanda must revise their service delivery.

Table 13: Distribution of respondents rating of the MTN Rwanda meeting Customer's needs and expectations

Responses	N° of Respondents	Percentages
Excellent	0	0
Very good	15	25
Good	30	50
Bad	15	25
Very bad	0	0
Total	60	100

Source: Primary data, October 2009

From table 13, it is clear that, 50% of respondents said that MTN Rwanda meeting customer's needs and expectations is good, while 25% said it is very good and 25% of respondents said also that it is bad, MTN Rwanda have to do a lot in order to meet its customer's needs and expectation in order for a business to be successful.

Table 14: Respondents ratings on their perception on customer care in MTN Rwanda cell

Responses	N° of Respondents	Percentages
Excellent	15	25
Very good	30	50
Good	10	16.7
Bad	5	8.3
Very bad	0	0
Total	60	100

Source: Primary data, October 2009

Customer perception on customer care in MTN Rwanda cell as indicated in the table 14; out of 100 respondents 50 said that their perception on customer care is very good, 25 said that is excellent and 16.7 said it is good and 8.3 said it is bad, from this table the researcher concluded that the customers perception on customer care in MTN Rwanda is very good as 50% of the respondents said.

Table 15: Distribution of respondents according to their views on time taken by a Company's employees to respond to their queries

Responses	N° of Respondents	Percentages
Immediately	40	66.7
Slow responses	10	16.7
Very slowly	10	16.7
No responses	0	0
Total	60	100.1

Source: Primary data, October 2009

From the table 15; it is clear that MTN Rwanda employees they respond immediately to the customers issues as 66.7% of the respondents said, while 16.7% said that their responses are slow and 16.7% said that they respond very slow, which is good since they respond with immediate actions.

Table 16: Respondents views on the way they rate customer care in the MTN Rwanda

Responses	N° of Respondents	Percentages
Excellent	0	0
Very good	0	0
Good	40	66.7
Bad	20	33.3
Very bad	0	0
Total	60	100

Source: Primary data, October 2009

As it is indicated in the table 16; customers respondents rate customer care to be good as 66.7% emphasised this while 33.3% said to be bad, this showed that customer care in the MTN Rwanda is good as above 50% of the respondents said.

Table 17: Necessary training and education to the MTN Rwanda

Responses	N° of Respondents	Percentages
Customer care	50	83.3
Effective communication	10	16.7
Time management	0	0
Total	60	100

Source: Primary data, October 2009

It is clear from table 3.17; that customer respondents proposed training and education in customer care to MTN Rwanda cell employees as 83.3% said it, while 16.7% said that they need training and education in effective communication. Therefore MTN Rwanda cell should organize trainings in customer care for its employees.

***On what they would like to be improved with regards to this company's customer care, the respondents said the following:**

- ⇒ They have to take customers as their first priority, because without customers the company can not function, the company is there because of customers.
- ⇒ To respond to customer problems 24hours per day, as sometimes customers get problems at night and they fair to get someone to help them.

***On what to be improved for quality of services of the MTN Rwanda cell:**

- ⇒ They have to improve their network,
- ⇒ Try to reduce their price on national and international calls
- ⇒ They have to improve their communication with its customers.

Hypothesis testing

Findings of the study on ***the importance of customer care in successful running of a company, A case study of MTN Rwanda*** were presented basing on the relevant information from survey of selected units. After distributing questionnaires to both MTN employees and customers respondents and analysis of documents as well as records of both parties and in pursuing the objectives of the study on the importance of customer care in successful running of a company,

there is sufficient evidence to accept the hypothesis stating that "there is a relationship between customer care and success of a company. Also proved was that customers choose the MTN Rwanda cell because of its customer care and the quality of its service"

General conclusion

Basing on the findings of the study, the researchers made the following conclusions. MTN Rwanda should consider evaluating the level of customer care so as to survive because customers are the key to the success of any business. Employees must be trained and motivated such that they have a positive responses and understanding of the customers and how to handle them. They should consider a customer as a king.

More to the above, good customer care service is essential for success in performance of the telecommunication company, that is in terms of market share, customer retention, and loyalty not forgetting a telecommunication company is a profit seeking entity which provides telecommunication services in anticipation of earning a profit. Therefore there is need to offer services to customers at the right time, with a good attitude, attentively interacting with a positive relationship now that the Rwandan Economy has registered or is still registering more telecommunication companies in the industry.

Suggestions

Despite the fact that MTN has been trying to improve the level of customer care, it was found out that some challenges still stand in the road of this long journey. Suggestions from the MTN employees and Customers on the way forward included the following; MTN Rwanda cell should improve its customer care by recruiting more skilled and knowledgeable customer care staff. This will translate into professionalism in service delivery.

MTN should modernize its IT equipments so that the problem of networks can be solved.

MTN Rwanda cell should improve its customer care services offered to its customers so that it can highly compete with other telecommunication companies. This will enable the company to seize a good number of customers.

MTN Rwanda cell should provide training on customer care to its employees in order to meet customer needs, which may have diverse effect to company functions in particular and profitability in general.

UBUNTU AS AN AFRICAN ARGUMENT AGAINST THE DEATH PENALTY

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GENERAL INTRODUCTION

Indigenous law is generally known as a set of rules of conduct regulating behaviour of individuals and communities and which, by maintaining the society's equilibrium, are necessary for its survival as a corporate whole. The main objective of indigenous justice is to maintain equilibrium between interests and forces interacting within one human society, namely to ensure that nothing threatens to destroy the equilibrium between society's groups¹². But this did not need a resort to life-threatening sanctions, like the death penalty, where individuals would be treated harshly and inhumanely.

The community is the sum of individuals and the accuracy or correctness of law cannot be dissociated from the idea of justice as conceived within one specific society in which it evolves. As Afolayan puts it in relation to African socio-economic underdevelopment, "it is false thinking for Africans to believe that they can find answers to their problems [...] without understanding their own previous endeavours and experience, at a time when it has virtually become an axiom that the past cannot be divorced from the present."¹³

¹² Ebo Chukwuemeka "Indigenous law and justice: some major concepts and practices" in Gordon R. Woodman and A.O. Obilade, *African Law and Legal Theory*, Dartmouth, Aldershot, Singapore, Sidney, 1995, p. 34. See also Gordon R. Woodman, "Some realism about customary law- the West African experience" in Gordon R. Woodman and A.O. Obidale [Ed], *African Law and Legal Theory*, Dartmouth, Aldershot, Singapore, Sidney, 1995, p.146.

¹³ Funso Afolayan, "Exploring Uncharted Frontiers in African Studies: Toyin Falola and His Works" in Adebayo Oyeade, [Ed], *The Transformation of Nigeria: Essays in Honor of Toyin Falola*, African World Press, Asmara, 2002, p.11.

The idea of community within African culture implies a network of mutual obligations and interdependence. Whereas a western says "Cogito ergo sum" (I think therefore I am) or *Je suis, J'existe*¹⁴ (I am, I exist) an African says, "I am because we are"¹⁵. Community has a major role not only in the acquisition but also in the development of the full personality and personhood. There seems to be no correct word to express this community interest in western languages.

Trying to find a right word in English¹⁶, Georges Ayittey refers to communalism, communitarianism, cooperation, communism, and socialism before finding all of them wrong. He then suggests "togetherness" and radically concludes that: "Imprecise definitions and poor understanding have given rise to much confusion about African philosophy in the post colonial period and spawned vulgar ideologies that bear little relation to indigenous value system."¹⁷

¹⁴ See Descartes René, "Méditations" in Descartes, *Oeuvres et Lettres*, Gallimard, 1953, pp.274-283. He states that [at 275]: "... il faut conclure, et tenir pour constant que cette proposition: Je suis, j'existe est nécessairement vraie, toutes les fois que je la prononce, ou que je la conçois en mon esprit." (It shall be concluded and be maintained that the phrase, I am, I exist, is necessarily true all the time I pronounce it or I conceive it in my mind).

¹⁵ Georges B.N. Ayittey, *Indigenous African Institutions*, Transnational Publisher, New York, 2006, p.42.

¹⁶ Tutu Desmond, *No Future Without Forgiveness*, Image, New York, 1999, p. 31.

¹⁷ Georges B.N. Ayittey, *Op. Cit.*, pp. 47- 48

The right word remains *Ubuntu* that implies group solidarity in Bantu languages¹⁸. *Ubuntu* has the same meaning in Zulu, Nguni, Xhosa, Kinyarwanda, Kirundi, Luganda and it is the synonymous of *Unhu* in the Shona language, the most spoken African language in Zimbabwe and Mozambique and *Obuntu* in Uganda and Northern Tanzania.

Today, the linguistic classification of Bantu has been preferred to the old classification that identified Bantu people with their economic *modus vivendi*, namely agriculture. Though the word 'Bantu' is still misused in many instances for invariably meaning all sub-Saharan black communities while many do not meet the linguistic criterion, Bantu are African people who, in their languages commonly call a human a "ntu" in singular and use the prefix "Ba" or "A" for plural. This makes " *Ba-ntu*" or "*Antu*."¹⁹

¹⁸ See Tutu Desmond, *Op. Cit.*, p. 32 and [http://www.wikipedia.org/wiki/Ubuntu_\(philosophy\)](http://www.wikipedia.org/wiki/Ubuntu_(philosophy)) [consulted on the 13 May 2008]. According to Alexis Kagame, language is an important element of culture as the subjective element of civilisation. When one language is distinguished from others, it is a sign of the specialisation of objective elements of a specific area's civilisation. In this regards, civilisation means adaptation of a human group which totally uses the human nature (intelligence, willing, sensibility and body's activities) for domesticating and embellish the physical milieu where he must live (climate and seasons, mines, hydrograph, fauna and flora), preventing causes of conflicts leading to internal destruction, defending his groups against any attempt of absorption from similar groups and transferring his knowledge and experience to his descendants. It follows that culture is included in civilisation. Whereas one may speak about Kuba culture, there is no Kuba civilisation because Kuba culture is included in Bantu civilisation. See Kagame, Alexis, *La Philosophie Bantu Comparée*, Présence Africaine, Paris, 1976, pp. 48 & 51.

¹⁹ For example, in South Africa and Botswana, Basotho, Bapedi and Batswana are Batho. In Swaziland, Swazi are Batchu. In Zambia, Lozi are Batu. In Namibia, Herero are Ovanu. In Angola and DRC, Bayazi and Bambunda are Bar, whereas Kwanyama and Luena - Lubale are Ovanu. In these countries still Mongo are Banto, Basakata are Bare, Bant are Bat, Mbala are Hadu, Kwese are Hatu and Umbundu are Omanu. In Eastern DRC, Bakonjo and Banande are Avandu, Banyanga are Beya, Babira are Bahuhu, Huku are Vumbi and Bahamba are Bakpa. In Congo Brazzaville, Ifumu are Baru and Tege are Bari. In Gabon, Bakele are Batyi, Mpongwe and Galuwa are Oma and Fang are Bur. In Cameroon, Fang are Bur, Basa and Ewondo are Bot and Bakwiri, Bankom and Isubu are Botu or Boto. See Kagame, Alexis, [1976], *Idem*, pp52-55.

As regards to death penalty, issues to be addressed may simply be summarised as follow:

- ⇒ Is retribution a matter of area and people or a matter of human character?
- ⇒ Were Bantu laws lesser barbaric than laws that influenced it later?

But in doing so, it is worthy noting that Bantu laws don't form a legal system per se. They are a set of different customs that vary depending on the area and people concerned. Any effort to construct a purely Bantu legal theory would be wrong, futile and useless. Though Allot mistakenly, we respectfully submit, equates it with the lack of sympathy and knowledge²⁰, such an effort would only be critical of other laws whereas the interest lies more in demonstrating to what extent and in which respects, propositions which are true of those laws are more or less correct in terms of laws under study²¹.

In assessing what is *Ubuntu* and to which extent its practice precluded the death penalty, the law has first to be isolated from its other social ingredients namely religion, moral and culture in order to identify whether there existed an individual criminal responsibility. Secondly, an inquiry on the ground is important. To assert whether people were sentenced to death or not needs a practical assessment. Likely not a case law critics as there are no available reports but, for the least, an indication of what existed and where.

²⁰ Trying to justify the unity of African law, Allot found that Southern Africa Bantu law was generally built on the same principles. He also noticed that in the then Tanganyika, there was a general pattern of the evolution of custom that was so uniform that it could be extended to other similar areas and tribes. No indication of areas and tribes concerned is provided. His strive to establish an identical African law has met little success. The fact that in all areas and in most tribes adultery was an offence does not mean that Bantu law, Bushmen law, nilo-hamitic law, ... had the same definition, the same punishment and the same judicial process as far as adultery is concerned. See Allot, A., *Essays in African Law*, Butterworth & Co, London, 1960, pp.55- 71

²¹Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p. xxv.

The death penalty should be distinguished among other things from summary executions, poison ordeal, vengeance and ritual murders which are not occupying our mind right now and here as they fall out of a judicial process through which a punishment is imposed for the wrong done by the offender.

Criminal responsibility in African indigenous law

It has been submitted that because of its restorative nature, African indigenous law did not need to make a difference between criminal law and civil law²². It only distinguished public law from private law in lieu of criminal law and civil law. Some writers went even far in affirming that if there is no difference between criminal law and civil law, then there is no law at all²³. It seems as if the idea of retribution overwhelmingly present in modern criminal law, specifically in today's punishments, has led to the wrong consideration that in its absence there would not be criminal law.

1.1. Identifying African indigenous criminal law

Whether criminal law existed or did not, depends much on its definition. Should this branch of public law mean a set of rule that determines forbidden behaviors, their punishments and the establishment of responsibility, then there was indigenous criminal law. Except the individual criminal responsibility, two main criteria are suggested for determining the existence of criminal law: a crime in need of a deterrent corrective sentence and a punishment inflicted to gravest and most unusual crimes.

²³ Holleman, J.F., "An Anthropological Approach To Bantu Law (With Special Reference To Shona Law)" in Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p.16.

²⁴ Olewale T. Elias, *The Nature of African Customary Law*, Manchester University Press, London, 1954, p. 114.

⇒ A crime that injures society at large and in need of a deterrent corrective sentence

It is argued that such a crime should be detected and punished by the State on behalf of the entire society. Therefore criminal law would not exist in the absence of this process. One may illustratively first refer to Ugandan primitive law that classified some crimes as being so heinous and dangerous that offenders should be sentenced to "a removal from society" as a warning to other potential criminals. It is pointed out on behalf of the Lango, Teso, Basoga, Bagishu, Banyoro and Baganda that:

"three species of misdeeds were wrongs against society at large for which there could be no appropriate remedy save the complete removal of the offender from the ranks of the tribe by immediate death. These offences were witchcraft, incest and sexual offences contrary to nature."²⁵

Though private prosecution is still a valid component of criminal procedure in many States today²⁶, in organised States like the South African Bantu Kingdoms, the administration of justice was in the hands of political authorities who were assisted by a small panel of assessors. The latter had the special function of advising the chief on points of law and helping him arrive at a sound verdict. Cases were usually tried first in the court of the authority of the defendant's residence and the right of appeal was granted²⁷.

²⁵ Hone H. R., "The Native of Uganda and the Criminal Law" in *Journal of Comparative Legislation and International Law*, Third Ed., Vol.21, Vol. 21, no 4, 1939, p.182.

²⁶ Snyman CR., *Crimina Law*, Butterworths, Durban, 2002, p.6.

²⁷ Schapera, I., *The Bantu- Speaking Tribes of South Africa*, George Routledge and Son, London, 1937, p. 212-213.

Equally, in more organized States, execution of punishment was carried out by State' officials. The absence of an organized police is only truer as regards to chiefless societies. In Kenya, a team of youthful warriors fully equipped and ready to execute the sentence assisted Kikuyu and Kamba elders when sitting for judging²⁸.

The punishment inflicted to gravest and most unusual crimes.

It is argued that:

"The African system of restorative justice did not need to make a distinction between criminal and civil laws. Crimes as well as disputes over rights or property were supposed to be settled by the payment of appropriate compensation [...] Restorative justice [...] had no place for punishment as an act itself, but rather insisted upon recompense and reparation."²⁹

It is respectfully submitted that a crime does not become a civil wrong because the punishment is light or not harmful in its nature. It has been argued that the most important difference between a crime and a civil wrong (delict) lies in the nature of sanction. Whereas the guilty party of a delict is ordered to pay compensation, crimes are punished by punishment imposed with the view of retribution, deterrence, prevention and rehabilitation of the offender³⁰.

But the argument basing the inexistence of criminal law on the harmful nature of punishment has been refuted³¹. Even modern authors have not defined crimes according to the nature of punishment. Synman defines a crime as a "conduct which is legally forbidden, which may, in principle, be prosecuted by the State, and which always results in the imposition of punishment."³²

²⁸Olewale, T. Elias, *The Nature of African Customary Law*, Manchester University Press, London, 1954, p.263.

²⁹Jeater Diana, "Their Idea of Justice is so Peculiar: Southern Rhodesia 1890 - 1910 " in Cross Peter (ed.), *The Moral World of the Law*, Cambridge University Press, London, 2000, pp. 182 - 184

³⁰Snyman CR, *Criminal Law*, Butterworths, Durban, 2002, p.6.

³¹Olewale T. Elias, *Op.Cit.*, p.115.

³²Snyman, CR., *Op. Cit.*, p.6.

This definition does not mention that a crime is crime because the offender has to serve a term of imprisonment or has to be hanged. The practice of suspended sentences, symbolic fines, or the day - fine regime that converts the amount of fine in a period of imprisonment for poor offenders demonstrate that crimes are so because they are prohibited and punished by the law.

For example, it would be a wrong conclusion that the Cap Nguni had no criminal law because they punished murder by compensation whereas it is undoubted that they made "some distinction between crimes and those wrongs which give rise only to civil remedies."³³ For the Ibo (Nigeria) "while all allegations of public offences were to be brought for judgment before a council of elders, private wrongs could be, and frequently were, settled by securing the personal arbitration of 'a big man.'"³⁴ The difference between the Nguni law, the Ibo law and the so - called modern understanding of criminal law is that the traditional criminal law looked beyond the offender and the crime committed whereas the modern criminal law is primarily and sometimes exclusively confined on the perpetrated crime and the offender's behaviour at the time of the crime.

Another issue was that even if there would be a criminal law, the process of imposing punishment was civil because it amounted to arbitration instead of adjudication. It should be reminded that, in Africa, compensation as punishment was not a matter of the individual. For the Arusha of Tanzania for example, "deliberations and jural processes concerning homicide focus more on the moiety."³⁵

³³ Schapera, I., *The Bantu-Speaking Tribes of South Africa*, George Routledge and Son, London, 1937, p. 208.

³⁴ Daryll Forde, "Justice And Judgment Among The Southern Ibo Under Colonisation" in Hilda Kuper and Leo Kupper, *African Law: Adaptation and Development*, University of California Press, California, 1965, p.84.

³⁵ Gulliver, *Social control in African Society: A study of the Arusha: Agricultural Masai of Northern Tanganyika*, Routledge & Kegan Paul, London, 1963, p.127.

Arbitration does not focus on the perpetrated crime and culpability of the offender rather on punishment, payment of which involves the entire group. As a member of the group, the individual should not be crushed by a punishment.

It follows that no distinction can be made between civil law and criminal law solely based on the judicial procedure or sanctions. The existence of criminal law is built on what is a crime and its punishment and who commits it. In other words, if there is no criminal law in terms of prohibited behavior and punishment, there cannot be criminal responsibility. The collectiveness of the African indigenous law does not preclude individual criminal responsibility. Contrarily to compensation, it is unthinkable to have collective harmful punishment as a result of a collective criminal responsibility.

1.2. The collective responsibility

In the mind of an African, a case taken to court deals less with the formal or substantive law and courts' procedural formalities than with the real conflict between live people. Parties attend the court not for hearing how the law is or should be interpreted, but to hear only and only about the case. It has an interest for the whole community, the judge included.

The community itself is an endless chain of generations and the law remains a heritage of past, existing and future generations³⁶. The interest of the community ranks first. Individuals exist only in relation to one another. The infringement of personalized interests by others directly affects the community itself.

³⁶Ebo Chukwuemeka, "Indigenous Law And Justice: Some Major Concepts And Practices" in Gordon R. Woodman and A.O. Obilade, *Op. Cit.*, p. 39.

This means that individual rights, though they exist, they are subsidiary³⁷. In his book, *The Destruction of Black Civilisation*³⁸, Williams Chancellor finds that Africans enjoyed more or less twenty-one fundamental individual human rights including the right to a fair trial and the right to indemnity for injuries or loss caused by others³⁹. The first right is related to the principle of proportionality between punishment and the offence and between this and the offender's ability to execute it, i.e. in cases of fines, the amount imposed and the real income of his or her family⁴⁰.

Individual rights being latent vis - à - vis community's rights, adjudication of conflicts is not dealt with in terms of wrong or right. This would bring the matter before a formal, impersonal and impartial organ in charge of questions of justice. A finding on who is wrong or who is right does not matter more than reaching a judgment that will not further break the fragile relationship between the parties or negatively affect other members of the community including the magistrate himself⁴¹.

Among the Banyarwanda with their *gacaca* courts, the Shona in Mozambique and Zimbabwe, Kwena and other Tswana tribes, a chief would not pronounce a judgement before he makes sure that the parties and the community support the decision.

³⁷See George B.N. Ayltley, *Op. Cit.*, p. 43; Holleman J. F., "An anthropological approach to Bantu Law (with special reference to Shona Iwa)" in Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p.6.

³⁸William Chancellor, *The Destruction of black civilisation*, Third World Press, Chicago, 1987, as quoted by Georges B.N. Ayltley, *Indigenous African Institutions*, Transnational Publisher, New York, 2006, p. 50

³⁹*Ibidem.*

⁴⁰*Ibidem.*

⁴¹Holleman J.F., "An Anthropological Approach To Bantu Law (With Special Reference To Shona Law)" in Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p.7

If the ruling was not satisfying, he will renew efforts until he reaches not a judgment as such but an agreement which balances the interests of all. The chief is a chairman rather than a judge. The logic is that the law should not be made more important than the people it is supposed to serve. The law must be flexible for meeting new situations⁴².

Within this context of community law, the main concern remains whether offender's rights do not carry more weight than that of the particular victim and, *in extensio*, that of the community⁴³. Did African restorative justice imply the absence of personal liability and therefore of individual punishment? In other words, does retributive justice necessarily mean State's monopoly on justice and consequently, should the State hurt individuals on its behalf? The very same idea lies behind the imposition of the death penalty. It is believed that it expresses society's condemnation of crime and brings down the offender to the same level as the victim⁴⁴.

In fact, the content of the individual liberty is diluted since harmony and cooperation within the community can only be met at some cost. It is worthy noting that retributive justice is sometimes equated to restorative justice. Professor Synman finds that "to avoid equating retribution with vengeance, [...] The expression 'restorative justice' is also sometimes used." In fact, retribution restores the legal balance disturbed by the commission of the offence.

⁴²*ibidem*. See also Georges B.N. Ayttey. *Op. Cit.*, pp.84 & 96-97.

⁴³Snyman, CR, *Op. Cit.*, p. 30.

⁴⁴*Idem*, p.16-17.

⁴⁵*Idem*, p.15.

MayerNevertheless, it is submitted that the African retributive justice does not mean more than the reparation of injuries or loss suffered, requital for doing good and blame for doing evil as well as rewards and punishments in appropriate cases⁴⁶. Justice is not done or seen to be done when a human being is subjected to deprivation of his liberty either for a term or for life as by a sentence of death⁴⁷. This is a fully non - harmful justice as understood by some African tribes. Why should Justice harm people on behalf of the community, as it is the case of the death penalty? This is for example the ground on which *maropa* or blood debt⁴⁸ was imposed as an appropriate sentence for murder within the Shona. It carries with it two fundamental ideas: a gesture of remorse and sorry for the misdeed to the family of the murdered and a means of replacing the murdered. The main purpose of justice here is that there should not be, even in the name of the law, blood feud because neither the victim family nor the society gained something in causing the death of the culprit or of his family⁴⁹. This approach aims to tie the two families instead of dividing them. By sending the maidn the families become "in - laws".

On the other hand, African restorative justice differs from the punitive restoration of the disturbed legal balance (retribution) in that legal sanctions, including the rare death penalty, are not framed with specific offences in view. They look beyond the isolated offence and the accused in the box for emphasising the overwhelming necessity of healing any breach in inter - personal relations resulting from the offence.

⁴⁶ Otonti Nduka, "The Traditional Concept Of Justice Among The Ibo Of South - Eastern Nigeria" in Gordon R. Woodman and A.O. Obidale [ed], *Op. Cit.*, p. 22

⁴⁷ Ebo Chukwuemeka, "Indigenous Law And Justice: Some Major Concepts And Practices" in Gordon R. Woodman and A.O. Obilade [ed], *Op. Cit.*, pp.34-35

⁴⁸ *Supra*, note 127.

⁴⁹ Jeater Diana, "Their Idea of Justice is so Peculiar": Southern Rhodesia 1890- 1910 " in Cross Peter [ed.], *The Moral World of the Law*, Cambridge University Press, London, 2000, pp 186- 187.

It is submitted " a more accurate view is to regard [the law] as a compensatory device which usually prescribes compensation to be paid by the individual or his family and *only in certain crimes is capital punishment deemed necessary or desirable.*"⁵⁰ The imposition of the death penalty means first the establishment of an individual criminal responsibility. It is concluded, where the penalty for an offender's public wrong was physically "the first and only subject to the particular punishment is the criminal himself."⁵¹

1.3. The individual criminal responsibility

It follows that there were individual rights and duties even though the person is economically and socially linked to his fellows. The principle remains that the primary responsibility reposes on the offender. It is pointed out from the Bantu legal philosophy that:

"Lorsque quelqu'un s'engage dans la direction défendue par la loi, se rendant lui-même compte de cette défense, et s'y engageant de propos délibéré, il en assume la responsabilité devant les autorités judiciaires. S'il s'engage dans la direction barrée par l'interdiction, il en assume directement les responsabilités de son acte lors même qu'il n'en était pas informé."⁵²

In fact, relatives only bear a vicarious liability in cases of compensation or restitution. Two circumstances justify the group's intervention:

⁵⁰ Ebo Chukwuemeka, "Indigenous Law And Justice: Some Major Concepts And Practices" in Gordon R. Woodman and A.O. Obilade [ed], *Op. Cit.*, p.90. This also appeases the view also that such punishments did not exist in African Jurisprudence. See *S v Makwanyane* CCT/3/94, para 377.

⁵¹ "When someone knowingly engages in a legally prohibited direction, he bears the responsibility before judicial authorities. If he breaks an interdiction, even if he was not aware of it, he is automatically liable for his acts." Our translation. Kagame, A., *La Philosophie Bāntu - Rwandaise De l'Être*, Académie Royale des Sciences coloniales, Bruxelles, 1956, p.407.

⁵² *Idem*, p. 89; See also Gluckman Max et alii [Ed.], *Ideas And Procedures In African Customary Law*, Oxford University Press, London, 1969, p.69.

◆ When the relative is a father of or is otherwise *in loco parentis* to the minor offender or a weakling for whose good behaviour the former is ordinarily responsible.

• If the offender calls upon relatives to answer for his misdeeds.⁵³

In homicide cases, the individual criminal responsibility stems from the distinction made between different categories of an intent in the crime of homicides and criminal defences at the hand of offenders rather than in the nature of punishment. Many African tribes distinguished between culpable homicide and murder. This demonstrates that the court could be satisfied on the existence or the absence of the *mens rea*. For example, the Venda of South Africa that punished murder by death, they only exacted fine for culpable homicide. In such a case, the whole family would contribute to pay the fine. The Tswana imposed no punishment at all as the death was accidental⁵⁴. The Zulu also had a great consideration for intent in homicides.⁵⁵

It has been submitted that in cases of compensation elders considered also the criminal intent and looked far beyond the culprit and the crime. Punishment takes into account the fact that if the death penalty would be imposed, orphans and widows would be the new victims of lack of compassion from the court. This is the reason why Somali doubled the amount of compensation from 50 to 100 camels if the injury was intentionally inflicted.⁵⁷

⁵³ *Idem*, p. 89; See also Gluckman Max et alii [Ed.], *Ideas And Procedures In African Customary Law*, Oxford University Press, London, 1969, p.69.

⁵⁴ Schapera, I., *The Bantu- Speaking Tribes of South Africa*, George Routledge and Son, London, 1937, p. 209.

⁵⁵ Ellen Jensen Krige, *The Social System of the Zulus*, Shuter and Shooter, Pietermaritzburg, 1936, p.228.

⁵⁶ Olewale, T. Elias, *Op. Cit.*, p.142.

⁵⁷ Georges B.N. Ayittey, *Op. Cit.*, p.80.

Secondly, offenders enjoyed a range of criminal defences including provocation, involuntary intoxication and insanity. Voluntary intoxication is not a defence as the offender has failed to act as a reasonable person.⁵⁸ For Banganda and Yoruba, an example of provocation is where the thief or the adulterer is caught re-handed (*in flagrante delicto*). It is always a mitigating circumstance for the killer⁵⁹. Furthermore, criminals will be inflicted personal punishments for offences usually punished by compensation or restitution had they become dangerous or habitual offenders⁶⁰.

It follows that the collectiveness of the law that is so important for social harmony does not rob individual rights and duties. Every crime primarily engages the criminal responsibility of the individual offender. He is the one who is sentenced and he is the one who may enjoy all defences provided for by the law. The group intervenes only if he cannot, from his own property, afford to pay the amount of compensation that varies according to the circumstances of the crime. That is an indication that the law contains the value of ubuntu. It is this value that precludes retributive punishments such as the death penalty.

II. Ubuntu versus the death penalty: a political slogan or a legal concept?

In describing *Ubuntu* as an African philosophy precluding the death penalty, it has been ruled that the value of *Ubuntu* prevents society from killing criminals.⁶¹

⁵⁸Olewale, T. Elias, *Op. Cit.*, pp. 143-144.

⁵⁹See *supra*, Dangerous and habitual offenders.

⁶⁰Snell G.S., *Nandi Customary Law*, East African Literature Bureau, Nairobi, 1954, p.63.

⁶¹See the main Judgment per President Chaskalson in *S v Makwanyane* CCT/3/94 para 131.

To understand the value of *Ubuntu*, one has first to dig its roots, analyse its content and relate it to the death penalty.

II. 1. *Ubuntu or the legalisation of an abolitionist political philosophy*

Authors have discussed its content without providing its origin. Rather than being philosophical, it has been submitted that *Ubuntu* comes from ANC's political agenda on African renaissance and from Archbishop Desmond Tutu's theology of reconciliation.

Describing the event in the early independence of Kenya and human rights abuses in DRC and Rwanda, Desmond Tutu laments as follows: "*Ubuntu* was abroad in the post *uhuru* Kenya [and] one could point to the opposite that had occurred in Belgian Congo in the early 1960s and more recently in the genocide in Rwanda. Where was *Ubuntu* then?"⁶² *Ubuntu* is related to political tolerance and reconciliation. Whereas after democratic elections in the 1980 Zimbabwe and 1989 Namibia, many were waiting for political and military reprisals against whites, it did not happen. "There were no reprisals against whites. That was *Ubuntu* at work."⁶³ This statement refers to Mugabe's most popular policy of reconciliation. He had learnt from the late Mozambican President, Samora Machel that confrontation results more in destruction than the country's building.⁶⁴ Tutu therefore urges South Africans: "What happened in South Africa had already taken place in these other countries."⁶⁵ This policy that expressively appeared in the post-amble of the 1993 negotiated Constitution is also enshrined in the preamble of the current South African Constitution that reads as follows:

⁶²Tutu Desmond, *Op. Cit.*, p. 32.

⁶³*Ibidem.*

⁶⁴Raftopoulos Brian and Compagnon Danlel, "Indigenization, the State Bourgeoisie and Neo - authoritarian politics" in Darnolf Staffan and Laakso Liisa [ed], *Twenty Years Of Independence In Zimbabwe*, Palgrave Mc Millan, London , 2003, pp. 16 -18.

"We ... adopt this Constitution ... as to heal the division of the past and establish a society based on democratic values, social justice and fundamental human rights."⁶⁶

The Constitution of South Africa has taken into account basic principles of the ANC's freedom charter. It is on the 25th and 26th June 1955 that one may locate the politicised *Ubuntu*. In June 1955, the ANC congress met at Kliptown, Johannesburg for adopting the freedom charter. The document stressed social justice ideology like equality before the law, equal status for all national groups, welfare for the elderly, plentiful food and even surprisingly provided that "no one shall go hungry."⁶⁷ But the charter's drafters had in mind Ngubane's novels. As the founder of the ANC Youth League, he had pointed out that *Ubuntu* was the common foundation of all African cultures and involved a consciousness of belonging together.⁶⁸

Ubuntu is better expressed by individuals' behaviour towards others. On the last day of the adoption of the charter, several trucks of white police erupted in the 3.584 ANC's delegates and interrupted the event. There is no better to narrate than quoting Holland who describes the scene as follow :

"They presented their search warrant, announcing that they had come to investigate a case of high treason. Ida Mtwana remembers a roar rising from the sea of black faces below her as she scrambled to her feet on the platform. "Comrades this is the hour! Please do not do a thing," she implored. 'Let's start singing!' Her high voice led the crowd into the first bars of '*Nkosi Sikelela iAfrika*'"⁶⁹

⁶⁶ Paragraph 6, 1 of the Preamble of the Constitution Act 108 of 1996, Government Gazette, p.3.

⁶⁷ Heidi Holland, *The struggle: A history of the African National Congress*, George Braziller, New York, 1990, p. 99.

⁶⁸ Tom Lodge, *South African Politics since 1994*, Cap Town, David Philip, 1999, pp 99-100 quoted by Lyn. S. Graybill, *Truth And Reconciliation In South Africa: Miracle Or Model?*, Lynne Rienner, London, 2002, p. 33.

⁶⁹ Heidi Holland, *Op. Cit.*, p. 100.

It follows that *Ubuntu* has been one of the Southern Africa struggle's strategies in terms of the no vengeance, no retaliation, and no retribution policy. This remained at the ANC's agenda through Thabo Mbeki's policy of "African Renaissance" which is in spread all over Africa⁷⁰. Here is where *Ubuntu* meets other African renaissance slogan like *Harambee* and *Ujamaa* initiated by revolutionary leaders.

Like *Ubuntu*, *Harambee* or "pulling together" in terms of mutual assistance and social responsibility, joint effort and community self-reliance is boasted to be enrooted in the Kenyan Bantu tradition⁷¹. It emphasizes collective good and provides the individual with his psychological need for identity, commitment, re - assurance, worth and legitimises its membership within the group⁷². But Anne Waiguru links *Harambee* with the upraising of nationalism:

"The concept became a national slogan and a motto on the nation crest and a rally cry on the Madaraka Day in June 1963 when the President of Kenya, Mzee Jomo Kenyatta formally made it such. After this day *Harambee* is used to denote collective effort, community self-reliance, ..."⁷³

Initially, *Harambee* was a political slogan symbolizing the unity of Kenyans to help achieve a worth goal. But it then fell "in the discussion of economic and social development in Kenya just as similar concepts are used in many other developing countries all over the world, e.g., "*ujamaa*" in Tanzania and "humanism" in Zambia⁷⁴.

⁷⁰See Heidi Holland, *Idem*, p.230 and Maloka T. Eddy, "The South African 'African Renaissance' Debate: A Critique" in Africa Institute of South Africa, available at www.polis.sciencespobordeaux.fr/vol8ns/maloka.pdf [18 April 2007].

⁷¹Philip M. Mbiti and Rasmus Rasmusson, *Self-reliance in Kenya, the case of Harambee*, Scandinavian Institute of African Studies, Uppsala, 1977, p. 13.

⁷²*Ibidem*

⁷³Waiguru Anne, "Corruption And Patronage Politics: 'Harambee' in Kenya" in Sampford Charles et alii [Ed], *Measuring Corruption*, Ashgate, Hampshire, 2006, p.253

⁷⁴See Chieni S. N., *The Harambee Movement In Kenya And The Role Played By Kenyans And The Government In The Provision Of Education And Other Social Services*, Moi University, Kenya [nd, np] available at <http://www.boleswa97.tripod.com/chieni.htm> [16 April 2007].

Ujamaa comes from a Swahili word meaning "extended family" and is embodied in the Tanzanian socialism deemed to be the most humanistic and realistic form of socialism in post - independent Africa⁷⁵. Julius Nyerere argues that:

"Our first step, there fore, must be to re-educate ourselves, to regain our former attitude of mind. In our traditional African society we were individual within society and the community took care of us. We neither needed nor wished to exploit our fellow men...The true African socialist does not look on class of men as his brethren and another as his natural enemies... "*Ujamaa*" then or "family hood" describes our socialism..."⁷⁶

Nyerere's *ujamaa* is compared to Jesus Christ's Gospel of love to one another although reciprocity is balanced with a dose of independence⁷⁷. The movement of *Ujamaa* has its origin in Katanga (DRC). Father Placide Tempels, a Franciscan Catholic priest founded it as a traditional approach of teaching after ten years of unsuccessful preaching of the Gospel. It had two goals: "to recognise in the other culture that which is "human" and valuable, and to be recognised by others as someone who shares their deepest human aspirations."⁷⁸

⁷⁵Robert J.C. Young, *Postcolonialism: An Historical Introduction*, Blackwell Publishing, Cornwall, 2002, pp246-248.

⁷⁶Nyerere Kambarage Julius, *Ujamaa: The Basis Of African Socialism*, available at <http://www.nathanielturner.com> [17 April 2007].

⁷⁷Frans Jozef Servaas, "I Am Just A Sukuma": Globalisation And Construction Of Identity In Northwest Tanzania," available at <http://www.bboks.google.ie/books/> [26 May 2008]

⁷⁸Johannes Fabian, *Jamaa, A Charismatic Movement In Katanga*, Northwestern University Press, Evanston, 1971, p.32.

The intertribal groups of Jamaa (family) became very influential in the region from 1953.⁷⁹

Jamaa doctrine is founded on human dignity and freedom as symbolized in the concept of *umuntu* (being a man) in *Tchiluba*. Jamaa is linked to three basic aspirations of the ancestors embodied in Bantu philosophy, namely life and force, fecundity and filiations and union in love in terms of fraternity and communion.⁸⁰ In this respect, Jamaa is not different from *Ubuntu* as conceived in South Africa.

Ubuntu has been linked to the Anglican theology of reconciliation. During the apartheid era, the preaching of Archbishop Desmond Tutu aimed at convincing whites that blacks were also God's children deserving to be treated with dignity and accepted as full citizens. One day the cleric held:

"Whites brothers and sisters in the Lord, you have sinned, but we are willing to forgive. The scriptures warn us that the wages of sin are death but, in your case, they seem [sic] to be wealth. If therefore you chose to shed a little of that sinful wealth as a first step toward atonement ...etc. etc."⁸¹

Nevertheless, society's transformation often requires pragmatism. After democracy occurred in South Africa, the former oppressor was the eventual victim of vengeance from the oppressed. The new teaching became Martin Luther King's preaching: Hate the sin, love the sinner.⁸²

⁷⁹ *idem*, p.10.

⁸⁰ Willy De Craemer, *The Jamaa And The Church: A Bantu Catholic Movement In Zaire*, Clarendon Press, Oxford, 1977, p.12 and 27-37.

⁸¹ As quoted by Wole Soyinka, *The Burden Of Memory, The Muse Of Forgiveness*, Oxford University Press, New York, 1999, pp25-26.

⁸² Martin Luther King, "Non violence and racial justice" in James W. Washington, *A Testament Of Hope: The Essential Writings Of Martin Luther King, Jr.*, Harper, San Francisco, 1986, pp10-11.

Blacks were the one to be convinced that, although sinners, whites were also children of God, belonging to the same family as them and consider that the humanity of one another is interdependent.⁸³

Whereas the Gospel was dedicated to the white community which was, for the most, Christian; the best way of preaching blacks, for whom Christianity and oppression would be synonymous in some cases⁸⁴, was to use the African tradition easily understandable and shared by all and give to *Ubuntu* its theological meaning of forgiveness, humaneness, love, understanding, reconciliation, etc.⁸⁵ *Ubuntu* and amnesty actually got a strong support from the peasant class of South Africa whereas literate blacks remained more or less reluctant to both.⁸⁶ Either supported by all or not, the most interesting aspect of *Ubuntu* as a politicised traditional value, is to know to which extent it precludes the death penalty.

II.2. Theoretical inconsistency between Ubuntu and the death penalty

As pointed out supra, there seem to be no precise definition for *Ubuntu*.⁸⁷ Its meaning comes from its daily practical effect through everyone's obligations within a family. In this regards, *Ubuntu* is restrictively related but not limited to group solidarity, conformity,

⁸³Tutu Desmond, *Op. Cit.*, pp.84-85; Lyn S. Graybill, *Truth And Reconciliation In South Africa: Miracle Or Model?*, Lynne Rienner, London, 2002, p. 32.

⁸⁴See mainly John Edwin Mason, *Social Death And Resurrection: Slavery And Emancipation In South Africa*, University of Virginia Press, Virginia, 2003, pp178-207.

⁸⁵Tutu Desmond, *Op. Cit.*, pp 83-84.

⁸⁶Theissen "Common Past, Divided Truth: The Truth and Reconciliation Commission in South African Public Opinion", Paper presented at the "TRC: Commissioning the past" conference, University of Witwatersrand, Johannesburg, June 11-14, 1999 p. 24 quoted by Lyn S. Graybill, *Truth And Reconciliation In South Africa: Miracle Or Model?*, Lynne Rienner, London, 2002, p. 24.

⁸⁷Lyn S. Graybill, *Truth And Reconciliation In South Africa: Miracle Or Model?*, Lynne Rienner, London, 2002, p. 32.

compassion, respect, humanistic orientation and collective unity and extensively related human dignity in social relationships.⁸⁸ A person with *Ubuntu* has generosity, hospitality, friendliness, care, sharing, etc and ready to rescue as a Samaritan.⁸⁹

It follows that *Ubuntu* also means to sacrifice one's interests for the sake of the weak or the oppressed. In her song *Gira Ubuntu* (Have *Ubuntu*), Cécile Kayirebwa links *Ubuntu* with an *effort de guerre* for rescuing those oppressed by dictators. Her song got a great impact on the Rwandan liberation war as the then reluctant people could now send their children and means as *effort de guerre*, sometimes in order not to be considered as indifferent.⁹⁰ This would be its political signification.

Moreover, the ground on which *Ubuntu* excludes the death penalty resorts from its emphasis on human life and human dignity. By its very nature, the right to life cannot be restricted. One is either alive or dead. This makes important and inestimable the value of human life. Another's life is at least valuable as one's own.

Ubuntu, in its essence, is contrary to success through aggressive competitiveness, resentment, lust for vengeance and retribution. It pleads for restorative justice.⁹¹ Its central concern is the healing of breaches and the redressing of imbalances. It aims to restore the broken relationships and rehabilitate both the victim and the perpetrator, the latter being given opportunity of reintegrating the community he has injured by his offence.⁹²

⁸⁸ *S v Makwanyane* CCT/3/94, para 308 as per Justice Mokgoro. See also Mokgoro Yvonne, "Constitution and law", a speech presented at a colloquium, University for Higher Education, Potchesfroom, South Africa, October 31, 1997 as quoted by Georges B.N. Ayittey, *Op. Cit.*, p.43.

⁸⁹ Olewale T. Elias, *The Nature of African Customary Law*, Manchester University Press, London, 1954, p.89; Tutu Desmond, *Op. Cit.*, p. 31.

⁹⁰ Kayirebwa Cécile, *Gira Ubuntu*, 1991.

⁹¹ Lyn S. Graybill, *Op. Cit.*, p. 33.

⁹² Tutu Desmond, *Op. Cit.*, pp.54-55.

Crimes as well as cruel, inhuman and degrading sanctions that invade human dignity are inconsistent with Ubuntu. Justice Langa states that:

"Respect for the dignity of every person is integral to this concept. During violent conflicts and times when violent crime is rife, distraught members of society decry the loss of *Ubuntu*. Thus heinous crimes are the antithesis of *Ubuntu*. Treatment that is cruel, inhuman or degrading is bereft of *Ubuntu*."⁹³

These characteristics are inconsistent with the value of *Ubuntu*. To describe one of its abominable natures, Reverend Jesse Jackson provides an example of inhumanness that he has likely humanised to his best:

"A convicted killer mounts a tall horse, and has his hands bound behind his back. The horse is lead beneath. [...] The swinging rope slaps the man in the face. When asked if he has any last words, he says: "I am sorry. I repent. Lord forgive these people." The executioner roughly pushes a black sac over the man's head and pulls the noose around his neck...snacks the horse on its haunches. The man appears to jump backward as his mount leaves him. For an instant he seems to be floating in air, but then his body is jolted by the tightening rope wrapped around his throat. The witnesses hear an ugly crack as his neck snaps, and he shakes violently for a few moments. His bowels and bladder empty simultaneously. The executioner smiles inwardly at his efficient handiwork, and the audience feels charged with a near - sexual exhilaration at having seen the life taken from this man."⁹⁴ Would a Zulu man exclaim: "*Yu u executioner nobuntu!*" in Sizulu?⁹⁵ It is submitted not. This scene does not comply with the principle "*Ubuntu ugumuntu ngabantu*" in Sizulu or "*Umntu nkundi*" in Kinyarwanda.⁹⁶

⁹³S v *Makwanyane* CCT/3/94 para 225.

⁹⁴Jackson Jesse, *Racism, Injustice And The Death Penalty: Legal Lynching*, Marlow and Company, New York, 1996, pp25-26.

⁹⁵*Idem*, p.31.

⁹⁶Georges B.N. Ayittey, *Op. Cit.*, p. 42.

A person with *Ubuntu* feels "diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are."⁹⁷ A crowd of fifteen thousand people watching the hanging of seven convicted criminal in Liberia were at the same instant terrified by the lack of *Ubuntu* in human justice. The scene is horribly described by a reporter:

"The place was Harper City. The day was Friday, February 16, 1979, five o'clock in the morning. More than 15,000 people stood in front of the gallows, which were constructed a few days earlier... When the bus with the seven arrived the crowd became quiet. That absolute silence of a 15,000 crowd was unbelievable and was one of the extraordinary experiences I have had during my 16 year stay in West Africa... It was nearly six o'clock and the sun started rising. The Sheriff started the count down a few minutes before six o'clock. At six o'clock sharp he blew his whistle and the hangman did his work. Within seconds the seven had died. The crowd kept silent, for at least another ten minutes, then the people started talking again, louder and louder..."⁹⁸

Ubuntu is also inconsistent with the death row phenomenon, which puts the condemned in a dehumanising, hopeless and traumatising environment.⁹⁹ The death row phenomenon expresses the length of time, generally long, between the imposition of the death sentence and its actual execution.¹⁰⁰

The condemned is a leaving dead.¹⁰¹ In fact Justice Mohamed has rightly stated that:

"The need for *Ubuntu* expresses the ethos of an instinctive capacity for and enjoyment of love towards our fellow men and women; the joy and fulfilment involved in recognising their innate humanity;

⁹⁷Tutu Desmond, *Op. Cit.*, p. 31.

⁹⁸Van Der Kraaj, Fred P.M., "The Open Door Policy of Liberia- An Economic History of Modern Liberia", Brimen, 1983 found at www.liberiapastandpresent.org [26 August 2009].

⁹⁹*S v Makwanyane* CCT/3/94, para 246, per Justice Madala.

¹⁰⁰Griffey Margaret and Rothenberg Laurence E., "The death penalty in the United States" in ODIHR, *The Death Penalty In The OSCE Area*, ODIHR, Warsaw, 2006, p.43.

¹⁰¹See Sarandon Susan and Penn Sean, *Dead Man Walking*, 1995, DVD.

the reciprocity this generates in interaction within the collective community, the richness of the creative emotions which it engenders and the moral energies which it releases both in the givers and the society which they serve and are served by."¹⁰²

Moreover, *Ubuntu* fits the requirements of rehabilitation. One of the purposes of criminal punishment is to see punishment itself not as an end but as a means towards an end, the offender's rehabilitation. The judge should not only consider the crime committed and its harmful effect but also balance those elements against the person and the personality of the offender.¹⁰³ Treatment is preferred to punishment mainly when that punishment aims to forever destroy any hope of recovering.¹⁰⁴ Society expects the offender to become a normal law-abiding and useful citizen. This has primacy on the heinous nature and brutality of the crime¹⁰⁵, and it is embodied in the value of *Ubuntu* that seeks forgiveness and restoration. It is in this regards that the right to life and the right to dignity, described as fundamental international human rights who look like two sides of the same coin are embodied in the value of *Ubuntu*.¹⁰⁶ This has been so far one of the grounds on which the death penalty was repealed in South Africa as being inconsistent with the value of *Ubuntu*.

¹⁰²S v Makwanyane CCT/3/94, para 263, 2 per Justice Mohammed.

¹⁰³Snyman, CR, Op. Cit., p. 21.

¹⁰⁴S v Makwanyane CCT/3/94, para 242 per Justice Madala. See also Terblanche, SS, The Guide to Sentencing in South Africa, Butterworths, Durban, 1999, p. 188.

¹⁰⁵S v Makwanyane CCT/3/94, para 244 per Justice Madala.

¹⁰⁶Idem, para 311, per Justice Mkgoro.

The death penalty as applied today would be one of the worst legacies of foreign intruders.¹⁰⁷

The practice of *Ubuntu* in African indigenous law: some case studies

Justice in some Bantu areas was built on principles of arbitration, mediation and restoration. These principles were applied even in very sensitive criminal matters. It is undoubted that the death penalty was inconsistent with the aim of justice not only in non-life threatening crimes like adultery and rape but it was inexistent for murder and witchcraft. That is obviously the result of the consideration that the community had for *Ubuntu*.

Though the concept "sexual offence" may bear a broad meaning including sexual acts that are deemed unnatural like homosexuality and bestiality, we will be concerned only with classical sexual offences namely adultery and rape.

¹⁰⁷ *Idem*, para 131, the main judgment by President Chaskalson. See also Schabas William A., "African Perspective On Abolition Of The Death Penalty" in Schabas William A., *The International Sourcebook On Capital Punishment*, North-Eastern University Press, Boston, 1997, p.33. According to Richard Wilson this view is controversial. *Ubuntu* would be a "current invention" of politicians named 'nation builders' and intellectuals who are selling *Ubuntu* as an indigenous value necessary for political compromise. Justice Mkgoro has also linked *Ubuntu* with the building of the new democracy in stating that: "In South Africa *Ubuntu* has become a notion with particular resonance in the building of democracy. In this regards, *Ubuntu* seems top have little relation with the death penalty before colonisation. This led Richard Wilson to argue that unless one is wishfully playing a romantic naïveté, examples where African traditional courts applied the death penalty proves that *Ubuntu* remains a current political invention and that revenge cannot be excluded from African indigenous law. See alternatively Wislon Richard, "The Sizwe Will Not Go Away: The Truth And Reconciliation Commission, Human Rights, And Nation- Building In South Africa" in *African Studies* 55, no 2 (1996) as quoted by Lyn S. Graybill, *Truth And Reconciliation In South Africa: Miracle Or Model?*, Lynne Rienner, London, 2002, p. 35 and *S v Makwanyane* CCT/3/94, para 308 per Justice Mkgoro. Lilian Chennui argues also that the death penalty existed even in some Bantu tribes even though it was not executed as practised today. See Lilian Chenwi, *Towards the abolition of the death penalty in Africa: A Human Rights Perspective*, PULP, Pretoria, 2007, p. 19.

Firstly, like in modern law, indigenous law defines adultery as a sexual intercourse between a married person with another person who is not her husband or his wife.¹⁰⁸ However, in some areas, like for Busoga people in Uganda, adultery could have a broad meaning like the mere fact of having control over a woman in such a manner that sexual relations were possible.¹⁰⁹

Marriage being a very valuable institution, religious rituals are performed for its stability. Ancestors and divinities are approached and consulted for their support and blessings. Family members and friends provide their advices to the new couple and are involved in every single matter of the process.¹¹⁰

Infidelity is deemed an outrageous crime, striking at the norm of society. When it results in conception, it inflicts a spurious offspring on the husband. Adultery is a crime not only against the husband but also against those corporate bodies in relation with him. It is a shameful act whose effects also offend both wife and husband's families, ancestors, gods and others preternatural beings because of the sanctity of marriage.¹¹¹

Whereas adultery was, as a serious offence, punishable by death elsewhere¹¹², for the Shona people (Mozambique and Zimbabwe), the guilty party would give a goat whose meat is shared by both parties as a sign of public reconciliation. Holleman states as follow:

" In cases like adultery, or others in which one party feels grievous insulted or his reputation seriously impaired, the court may, if it fears further trouble between parties, insist that they be publicly reconciled [...]

¹⁰⁸See Adewale S.A., "Crimes and African traditional religions" available at www.africaworld.net/afrel/atr-crime.htm [16may 2008].

¹⁰⁹Lloyd A. Fallers, *Law without precedent: Legal ideas in action in the courts of colonial Busoga*, Chicago University Press, Chicago, 1969, p.115- 118.

¹¹⁰Adewale S.A., *Ibidem*

¹¹¹*Ibidem*, See also Gluckman Max, "Limitations Of The Case Method In The Study Of Tribal Law" in Gordon R. Woodman and A.O. Obidale [Ed], *African Law and Legal Theory*, Dartmouth, Aldershot, Singapore, Sidney, 1995, p.104

The guilty party is made to produce a goat or fowl which is killed at the court. The chief has a piece of meat prepared, which he divides between the parties making them eat together. Or they are required to take snuff together [as] one does not take food or snuff with one's enemy."¹¹³ The meat or snuff is shared also by members of the court and public as an expression of public support of the decision reached. The same sentence was applied *mutatis mutandis* to incest and unlawful sexual intercourse during a period of mourning.¹¹⁴

For Pokot of Kenya, two brothers from the Dove clan were accused of adultery with wives of Hawk, another clan. The sentence was compensation of a hut of goats and two calves.¹¹⁵ Confessed adultery was sentenced by from three goats to three heads of cattle for the *Iteso* tribe of Uganda.¹¹⁶ As an exception that does not confirm the rule, DRC's Bantu tribes of Ndengese, Lulua, Tetela and Yansi, punished adultery by ritual purifications as gods have been insulted and the body of adulterers swilled.¹¹⁷

It follows that even though marriage is concluded after a very long ceremonial process and remains a valuable institution in African tradition, Bantu laws did not apply the death penalty for adultery. Compensation was the valid sentence in many Bantu laws.

¹¹³ Holleman, J.F., "An anthropological approach to Bantu Law (with special reference to Shona Iwa)" in Gordon R. Woodman and A.O. Obidale [Ed], *African Law and Legal Theory*, Dartmouth, Aldershot, Singapore, Sidney, 1995, p.14.

¹¹⁴ Jeater Diana, "Their Idea of Justice is so Peculiar: Southern Rhodesia 1890 - 1910" in Cross Peter [ed.], *The Moral World of the Law*, Cambridge University Press, London, 2000, p. 194.

¹¹⁵ Gluckman, Max, "Limitations Of The Case Method In The Study Of Tribal Law" in

¹¹⁶ Gordon R. Woodman and A.O. Obidale [Ed], *African Law and Legal Theory*, Dartmouth, Aldershot, Singapore, Sidney, 1995, p.101.

Nkambo Mugerwa P.J., "Status, Responsibility, And Liability: A Comparative Study Of Two Types Of Society In Uganda" in Gluckman Max et alii [Ed.], *Ideas and procedures in African Customary Law*, Oxford University Press, London, 1969, p. 281.

¹¹⁸ However adultery with the chief's wife is considered as an attempt to the life of the Chief. See mainly "Adultère chez les Ndengese, Lulua, Tetela et Yansi" at www.ceeba.at/so [20 May 2008].

However, other punishments existed depending on the valid culture in different areas. This is the case of ritual purification. It is worthy noting that the same rule of compensation for adultery would be found among non-Bantu people like the Ibo of Nigeria whereas Yoruba, still of Nigeria, applied the death penalty for adultery.¹¹⁸

Secondly, rape consists in a coerced sexual intercourse. But this gender-neutral definition can hardly be applied to the indigenous society where the rule of law did not much protect women. However, even the today's gender-neutral definition of rape does not aim to protect women but men. Many legislators have also qualified as rape any sexual intercourse or practice with teenagers for discouraging or combating the spread of paedophilia.¹¹⁹ Thus, the sexist definition of rape has always been "a male having unlawful and intentional sexual intercourse with a female without her consent."¹²⁰

This is as well the definition of rape in Zimbabwean and Bemba (DRC) indigenous law. The women must have been coerced to have sexual intercourse and penetration is necessary.¹²¹ Consent is assumed if she did not call for help or immediately report the case. Then it is adultery instead of rape.¹²² Cases of pregnancy without any evidence of coercion were likewise treated as adultery or unlawful sexual intercourses. For Bemba tribe in DRC, a crime of rape without witness was a matter of abomination.¹²³

¹¹⁸Otonti, Nduka, "The Traditional Concept Of Justice Among The Ibo Of South - Eastern Nigeria" in Gordon R. Woodman and A.O. Obidale [ed], *Op. Cit.*, p.25

¹¹⁹See for example Law No 27/2001 of 27 April 2001 relating to rights and protection of the child against violence (Rwanda) in , Sexual Offences Act 23 of 1957 as amended (South Africa), Combating of Rape Act 8 of 2000 (Namibia), Sexual Offence Special Provisions Act 1998 (Tanzania).

¹²⁰Snyman, CR, *Op. Cit.*, p. 445.

¹²¹Jeater Diana, "Their Idea of Justice Is so Peculiar": Southern Rhodesia 1890 - 1910 " in Cross Peter [ed.], *The Moral World of the Law*, Cambridge University Press, London, 2000, p.183.

¹²²Gluckman, Max et alii [Ed.], *Ideas And Procedures In African Customary Law*, Oxford University Press, London, 1969, p.67.

¹²³*ibidem*

¹²⁴Holleman J.F., " An Anthropological Approach To Bantu Law (With Special Reference To Shona Law)" in Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p.17.

In all instances, the victim had to lay down the relevant evidence, which was often irrational in terms of divination.¹²⁴

In general, the rapist had to pay the bridewealth if the raped was a girl, compensation to the husband or father should the victim be a wife or a widow staying with her parents. Compensation amounted to hand in a certain number of goats or money.¹²⁵ There is no place for death sentence even when the raped was a teenager.

III.2. Compensation as an appropriate sentence for assault and homicides.

Cases of assault were solved by compensation. This offence consists in unlawfully and intentionally applying force to the person of another either directly or indirectly.¹²⁶ Compensation can be illustrated by an example from *Mbeere* people in Kenya. Ireri injured his father Njiru with an arrow and smashed his gourd of beer. They had engaged in vexatious verbal exchanges when drinking together. The father decided to kill physically or socially his son. When the matter was put before the court, the elders found that both men were wrong: Ireri for having assaulted his father and smashed his beer and Njiru for having thrown soil (verbal insults) to his son. Ireri was condemned to give a goat and the father to swear an oath that he won't curse his son any more.¹²⁷ The court explained its findings:

"We have decided this because you beat an old man, although we know that Njiru made a mistake in throwing soil (issuing verbal insults). Even if you appeal anywhere else you will be told to provide a goat because you beat your father.

¹²⁴Holleman J.F., "An Anthropological Approach To Bantu Law (With Special Reference To Shona Law)" in Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p.17.

¹²⁵See generally Jeater Diana, "Their Idea of Justice is so Peculiar": Southern Rhodesia 1890- 1910 " in Cross Peter [ed.], *The Moral World of the Law*, Cambridge University Press, London, 2000, pp.182- 183.

¹²⁶Snyman, CR., *Op. Cit.*, p.430.

¹²⁷Glazier Jack, *Land And The Use Of Tradition Among The Mbeere Of Kenya*, Lenham, MD:University Press of America, 1985, p. 146, as quoted by Georges B.N. Ayittey, *Op. Cit.*, 2006, p. 73

Even if you go to London, you will be told to bring a goat. With the goat, Njiru will take an oath "may this oath kill me if I throw soil and curse my son."¹²⁸

For the Kuba, the right sentence for assault was a fine paid to the king and compensation in terms of a serf woman.¹²⁹

Moreover, nowadays we make a clear difference between murder and culpable homicide: the former being an intentional causing of death of another human being and the latter a negligent causing of death of another human being.¹³⁰ These differences in the offender's moral culpability added to other factors related to the crime committed, the quality of the victim and personal factors concerning the offender result in variation of sentences even in cases of identical criminal qualifications.

It has been submitted that, before the middle of the 19th century, many Bantu laws did not make difference between the two offences.¹³¹ The offender had the same degree of culpability provided he was found guilty. For Kikuyu, Kamba and Pokot of Kenya¹³², and Arusha of Tanzania¹³³, if the offender had inadvertently thrown a spear to his fellow hunter caught by a lion instead of striking the lion, he would be held responsible in the same way if he took such an opportunity to defeat a challenging concurrent or enemy. Be it a case of intentional homicide or of culpable homicide, the sentence remained compensation. This provides insurance for the dependants of the victim. Compensation was called "blood - debts".

¹²⁸ibidem

¹²⁹Jan Vansina, "A Traditional Legal System: The Kuba" in Hilda Kuper and Leo Kuper (Ed), *African Law: Adaptation and Development*, University of California Press, California, 1965, p.105.

¹³⁰Snyman, CR., *Op. Cit.*, pp.421 and 425.

¹³¹Hone, H.R., "The native of Uganda and the Criminal law" in *Journal Of Comparative Legislation And International Law*, vol 21, no4, 1939, p181 & 186.

¹³²Gluckman, Max, "Limitations Of The Case Method In The Study Of Tribal Law" in Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p. 100.

¹³³Gulliver, P. H., *Social Control in An African Society*, Routledge and Kegan Paul, London, 1963, pp.127-129.

An eloquent case from Pokot tribe may illustrate this. A member of the Hawk clan fought against a member of the Doves clan and killed him. In the absence of immediate compensation, Doves made a military demonstration against killer's village until the elders of both clans were obliged to settle the matter. Upon compromise on compensation, the near kin of the deceased was asked to claim reasonable compensation. He asked a hut of goats and a calf, this being the "blood- debt".¹³⁴ An identical process is found within the Mbari, a clan of the Kikuyu tribe still in Kenya.¹³⁵ For Baganda of Uganda, deliberate killing was not common but it was generally punished by compensation. Killing one's slave or wife was not an offence unless the perpetrator does not have acceptable grounds.¹³⁶

For the Luo, another Kenyan tribe, restitution for homicide is in terms of a girl from the clan of the murderer to bear progeny in the name of the victim.¹³⁷ The same principle was applied in Zimbabwe. The family of the murdered victim found it inhumane to engage in bloodshed vengeance. There is no reason to loose a second life. Therefore, the family of the offender had to pay a woman or, sometimes, two girls as a sign of acknowledging the offence and expressing sorry but also as a way of redressing the loss of a family member. That compensation is called *maropa*.¹³⁸ This has been the same in many other southern Africa Bantu tribes.¹³⁹

¹³⁴Idem, p. 101.

¹³⁵Simiyu V. G., "The Democratic Myth In The African Traditional Societies" in Walter O. Oyugi et al., (ed), *Democratic Theory And Practice In Africa, 1988*, Heinemann, Portsmouth, p.65 as quoted by Georges B.N. Ayitley, *Op. Cit.*, p.75.

¹³⁶Hone, H. R., "The Native of Uganda and the Criminal Law" in *Journal of Comparative Legislation and International Law, Third Ed.*, Vol.21, no 4, 1939, p.183.

¹³⁷Gulliver, P. H., *Op. Cit.*, p104. See also Lilian Chenwi, *Op. Cit.*, p.18.

¹³⁸See Jeater Diana, "Their Idea of Justice is so Peculiar: Southern Rhodesia 1890- 1910 " in Cross Peter (ed.), *The Moral World of the Law*, Cambridge University Press, London, 2000, pp186-187.

Also, the death penalty did not exist for murder in some South African Bantu tribes like the Tsonga, Nguni.¹⁴⁰ It has been stated that Montshiwa and Moshoeshoe, respectively Kings of Barolong and Basotho were as well expressively against the death penalty even in cases where it was applied in other kingdoms. They believed not only that such a punishment divides the community but it was also useless to take the second life.¹⁴¹ Two wrongs do not make a right. In all cases of murder, property of people¹⁴² and females¹⁴³ constituted a reserve for justice debts. Compensation was also resorted to as the primary remedy to murder in Western Uganda, Rwanda and Northern Tanzania.¹⁴⁴

Compensation was not exclusive to Bantu law. The same practice of blood compensation but named blood-writ in cases of intentional homicide and blood- payment for accidental homicide existed in Kano (Nigeria) as well.¹⁴⁵

However, even though the above mentioned Bantu tribes and other Bantu kingdoms did not apply the physical death penalty, some of them resorted to the social death, in terms of ostracism or banishment as the only appropriate sentence in some cases. In fact, whereas the today's society considers murder as the most violent crime, witchcraft was then a very serious offence.

¹⁴⁰Schapera, I., *The Bantu - Speaking Tribes of South Africa*, George Routledge and Son, London, 1937, p.209.

¹⁴¹*S v Makwanyane CCT/3/94, para 377 per Justice Sachs.*

¹⁴²*Ibidem*

¹⁴³See discussions of the value of females in indigenous justice by Jaater Diana, "Their Idea of Justice is so Peculiar: Southern Rhodesia 1890- 1910 " in Cross Peter [ed.], *The Moral World of the Law*, Cambridge University Press, London, 2000, pp.185-194.

¹⁴⁴Lilian Chenwi Op. Cit., p.19.

¹⁴⁵Cahristelow, Allan, "Theft, homicide and Oath in Early Twentieth Century Kano" in Mann Kristin and Roberts Richard [ed.], *Law in Colonial Africa*, James Currey, London, 1991, p.217.

IV.1.3. Ostracism as the ultimate punishments for witchcraft

Finally, the case of witchcraft usually punished by ostracism remains controversial. This stems from the statement that the death penalty, banishment, imprisonment and corporal punishment "are all unknown in African Jurisprudence."¹⁴⁶ If banishment is synonymous to ostracism, then in some area witchcraft was not an offence at all while in others it was a serious crime punished by capital punishment. Ostracism consists in seeing first the individual as a non-person, meaning he ceases to enjoy his status within the community, which has withdrawn its support for him. Afterwards, he becomes a pariah to all intents and purposes, cannot take part in social activities any more and ends up as a *persona non grata*.¹⁴⁷ This was the most feared punishment because reciprocity plays a vital role in everyone's life.

Abel gives a case of such a punishment in the Luo community that may be summed up as follow: One Ogalo engaged in a fight when he was away from home and he and his adversary were seriously injured. Ogalo, fearing a judicial process did not go back home and hid. Then rumours started that he was killed or was dying somewhere. Her mother accused their neighbour Augustino of witches and in her cry she wanted now Augustino's wives to bear children called Ogalo. She even went far in stating that Ogalo was involved in the fight because of Augustino's witchcraft. "Witches are so greatly feared, they are generally avoided and Augustino was at least threatened with ostracism if the accusation was believed", concludes Abel.¹⁴⁸

¹⁴⁶The Cape Law Journal 1889CLJ89, 1890CLJ 23 at 34 as quoted by Justice Sachs in *S v Makwanyane* CCT/3/94, para 377.

¹⁴⁷Ebo Chukwuemeka, "Indigenous Law And Justice: Some Major Concepts And Practices" in Gordon R. Woodman and A.O. Obilade [Ed], *Op. Cit.*, p.39.

¹⁴⁸Abel Richard, (1969), "Customary Laws of Wrongs in Kenya: an Essay in Research Method" 17 *The American Journal of Comparative Law* 573 as quoted by Gluckman, Max "Limitations Of The Case Method In The Study Of Tribal Law" in Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p.104.

In Zimbabwe, ostracism was as well the appropriate sanction. Witches were entirely exiled from community. They were deprived of vital social support and denied of their social identity. However their families were still required to pay compensation to their victims.¹⁴⁹ In other area, compensation remained the heaviest punishment. In DRC, if it is proved that death resulted from acts of a witch, reparations was compulsory as pointed out by Tayaya Lumbombo that:

"La sorcellerie et la magie qui occupent une si grande place dans les institutions coutumières, ont un impact sérieux sur le comportement de l'individu. Lorsque la mort d'un sujet est provoquée par le chef du lignage et que celui-ci accepte ce forfait, pour empêcher au défunt de venger sa mort, le chef du lignage est obligé d'exécuter un rite de "Nkwamur". Le plus souvent, il donne à la mère du défunt ou à un de ses frères une chienne ou une chèvre. Celle-ci est élevée. Si elle se reproduit, [sic] on conclut que le défunt a accepté le rite. Mais dans le cas contraire, le défunt l'a refusé."¹⁵⁰

From the above cases, it is obvious that there was no death penalty for these aforementioned crimes in these Bantu laws. It is affirmatively so submitted in respect of States and tribes concerned.

GENERAL CONCLUSION

The above development intended to resolve the broad question of whether the death penalty did exist in the pre-colonial Bantu Laws. As a punishment, it insinuates the presence of a rule of law and more specifically of criminal law.

¹⁴⁹Jeater Diana, "Their Idea of Justice is so Peculiar: Southern Rhodesia 1890- 1910 " in Cross Peter [ed.], *The Moral World of the Law*, Cambridge University Press, London, 2000, p.184, Holleman J.F., " An Anthropological Approach To Bantu Law (With Special Reference To Shona Law)" in Gordon R. Woodman and A.O. Obidale [Ed], *Op. Cit.*, p.16.

¹⁵⁰"Witchcraft and magic play a major role in traditional institutions and have serious impact on individuals' behaviour. In the case death is allegedly provoked by the Chief of the lineage who accepts the forfeit, he will be obliged to execute the "Nkwamur" rite for precluding any vengeance. He often hands to the deceased's mother or brothers a goat or a dog. If the animal is productive then the deceased has accepted the rite, otherwise he has refused it." Our translation. See

In fact, there are prominent African lawyers who have concluded that a factual reality in one area, for some people, should lead to a general conclusion about all other Africans in other areas. The inference dealt mainly with criminal law and it overlooked that justice was differently conceived. Yet the way each small or big community defined its criminal law in terms of prohibited behaviors and their respective punishments demonstrates this discrepancy. It goes without saying that all societies recognized conducts that were harmful to individual and community at large and adopted remedies for redressing injuries suffered by victims.

The first justification of the exclusion of the death penalty in pre-colonial Africa is the answer to the question 'what is the purpose of punishment?' If it is to destroy the offender without taking into account the impact of such destruction on his group and primarily his widow and orphans, then the death penalty is the right answer. However many African tribes and especially but not exclusively Bantu speaking people found that society did not need the *lex talionis*. They found that compensation could serve the aim justice. It was a tool of restoration, retribution, deterrence and rehabilitation. For Bantu people, the idea of justice is lodged in the value of Ubuntu.

Unfortunately, though we find cases on the effective application of Ubuntu in the pre-colonial Africa, the legal meaning of the concept is very recent. There are opinions arguing that Ubuntu is of current invention. It would have been used by the new South African political leadership as a Joker card for building up a country torn by several decades of racial injustices. In this respect, Ubuntu evolved slowly but very consistently as the ANC's political ideology that is still in spread today through the so-called African Renaissance in South Africa. It is also present in Kenya through Harambee and Tanzania through Ujamaa. Whatever be the case, it has been one of grounds that justified the repeal of the death penalty by the South African Constitutional Court.¹⁵¹

¹⁵¹S v Makwanyane, supra fn 149

The greatest characteristic of the value of Ubuntu is the consideration it gives to human life and dignity. This makes it inconsistent with the imposition of the death penalty. It is not naïve to consider that the value of Ubuntu that preaches humanism does not allow the killing either of victims or of offenders. Restoration is preferred to punitive retribution and vengeance. Did this preclude the death penalty all over Africa?

States that recognised Ubuntu did not resort to the death penalty even for the most feared crime in the pre-colonial Africa, namely witchcraft. The most severe punishment remained ostracism or banishment. The philosophy is that there is no reason to lose a second life. Two wrongs do not make a right. But, it would be wrong to draw a general rule even for the Bantu community as instances of resort to the death penalty in special and rare cases existed.

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