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Contents

Mediation in the European Union: The Directive 2008/52/EC and its Effects on National Legislations

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Abstract. *Recent reports on the use of mediation in the European Union question the strategies adopted by the member states, insisting that the provisions of the Directive 2008/52/EC have not been bold and imperative enough, therefore conducting to the relative lethargy of mediation as an alternative to courts in solving disputes. This paper analyzes the provisions of the Directive and how they have been transposed into the national legislation of Romania, as a case study relevant to the subject. It argues that there is not enough data to claim that these provisions or any other would have had a different impact upon the recourse to mediation in the EU.*

Keywords*: mediation, European Union, Directive 2008/52/EC, Romania, Law 192/2006, civil disputes, commercial disputes, cross-border disputes.*

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Overview

Using mediation as an alternative to courts was not a new European advent. Mediation had been tried for decades (if not more, in some cases like Denmark) in various member states, with varying degrees of success. England and Netherlands had been pioneers of implementing mediation within their national justice systems, under the form of functional pilot programs designed to test the method and its reception by the public. The results were deemed worth of pursuing these policies and proved contagious, as other countries started to experience different models of alternative dispute resolution mechanisms.

As with other practices, mediation in Europe was implemented piecemeal and rather chaotic, with member states using a wide range of strategies to make mediation attractive for their citizens, with big variations in the degree of implementation and inconsistent results. As courts became more and more overwhelmed, as public budgets shrunk and cross-border disputes grew in number exponentially, it became clear that a new, more coordinated approach would be needed if mediation (and other alternative dispute resolution methods) was to succeed. Directive 2008/52/EC was intended to be such an approach. Even if it focuses on the wide domains of civil and commercial matters, it is of no limited interest for family matters, especially those regarding matrimonial matters and matters of parental responsibilities.

It has to be noted that the Directive is not the first European document concerning alternative methods of dispute resolution. It is based upon the Conclusions on alternative methods of settling disputes under civil and commercial law, adopted by the Council in May 2000, a document stipulating that the establishment of basic principles in the area of alternative dispute resolution is essential for the development and operation of extrajudicial procedures for the settlement of civil and commercial disputes and to improve access to justice.

In April 2002, the European Commission presented a Green Paper on ADR in civil and commercial disputes, taking into account the present situation and enabling consultations between member states and interested parties concerning possible measures of implementing and promoting mediation. This process opened the road towards Directive 2008/52, a document seen as contributing to the proper functioning of the internal market as part of the policy of the European Union to establish an area of freedom, security and justice, which encompassed access to judicial as well as extrajudicial dispute resolution methods.

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

In its preamble, the Directive stipulates that "*mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements*". All these are elements pleading for the wide use of mediation as a mainstream method of dispute resolution, on equal foot with traditional judicial procedures.

Key to understanding the importance of the Directive as a turning point in mediation implementation and promotion in the EU is paragraph (8) of the preamble, saying "*the provisions of this Directive should apply only to mediation in cross-border disputes, but*

nothing should prevent the Member States from applying such provisions also to internal mediation processes" (Directive 2008/52/EC). This paragraph became the instrument of pressure used by EU bodies, notably the Commission, to nudge the member states to implementing and promoting mediation more boldly within their own judiciary systems.

The Directive strikes to set up a proper balance between mediation and judicial procedures by asking the member states to make agreements resulted from mediation enforceable in cross-border disputes, as it was the case with the Regulation 2201/2003 provision about recognition and enforceability. The Directive recommends that an agreement resulted from mediation in one member state should be recognized and enforced in another member state (if the case requires), except is its provisions contravene national legislation of the enforcing state. It also forbids the use of mediation agreements enforceability rules to circumvent the limitations imposed by Regulation 2201/2003 on the recognition and enforceability of judgments on parental responsibilities.

The Directive's preamble also takes note of the decision of England and Ireland to take part in the adoption and application of the Directive and of Denmark to use its opt-out right and not take part in the process.

The provisions of the Directive concern the definition of mediation and mediators, the definition of cross-border disputes, the quality and access to mediation, the enforceability of mediation agreements, the voluntary and confidential nature of the process, its effects on the limitations and prescription periods and rules regarding the information of public and on competent courts and authorities.

Regarding the definition of mediation as a process, the Directive had to take into account the wide range of definitions present in the body of literature available on the matter (Chereji & Gavrila, 2014). As there is no universally recognized definition of mediation (against all efforts done by institutions like the International Mediation Institute to deliver one), the Directive had to come up with one that can broadly cover all visions, even if this approach is not necessarily contributing to clarifying the issue. Art. 3 (a) says:

"*'Mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.*

It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question" (Directive 2008/52/EC).

This definition contains a number of elements of importance to the understanding of mediation as a process. First of all, mediation refers only to those processes where

two or more parties (in person or represented) attempt to settle their dispute with the assistance of a mediator. The Decision to settle rests with the parties and cannot be forced upon them by the mediator. Therefore, mediation excludes negotiation made by the lawyers of the parties themselves in order to settle the matter out of court, or by judges or courts seised to make a decision through judicial proceedings. A judge can play the role of mediator only in disputes where she/he is not the person making the judgment (as in the notable example of France, where judges regularly play the role of mediators). Mediation is, by an large, a negotiation between the parties where they benefit from the support of a third party (preferably neutral and impartial), no matter how this third party is called. The decision is retained by the parties, and they can proceed or stop the proceedings of mediation on their own will.

The term "voluntary" included in the definition presides over the whole understanding of mediation as an alternative to courts in settling disputes. It signifies that, by no means, mediation is not a replacement of the courts – the principle of free access to justice is fundamental to any proper democracy and cannot be infringed by ordering the parties to use mediation and deny their "day in court" if they not oblige. The voluntary principle of mediation means that courts or other authorities can suggest or even order the parties to attend mediation, but they cannot deny their right to use the courts venue to settle their dispute based on their non-compliance with the court suggestion or order. This principle is also based on common-sense: as long as mediation is defined as a special negotiation process (assisted or facilitated by a third party), it is only logical that parties cannot be forced to negotiate and settle if they do not want to.

Other fundamental elements necessary to make mediation an attractive way of solving disputes out of court are embedded in the definition of the mediator (Art. 3 (b)) and the recommendations for ensuring the quality of mediation process (Art. 4). The entire body of literature on mediation stipulates that neutrality and impartiality of the mediator are essential for the success of mediation. Neutrality is defined as the absence of any conflict of interests (the mediator should not have any proverbial horse in the dispute she/he is called to mediate). Impartiality refers to the need to treat the parties equally and without unilateral favor and also, more controversially, to uphold the balance of power between the parties. This last provision is contested by some schools of thought as contrary to the principle of self-determination of the parties – the decisions regarding the flow of the mediation process and the settlement rest entirely with the parties, so it's up to them to decide how to devise the terms of the agreement, no matter the opinion of the mediator about the fairness of them.

The competence of the mediator is also of concern for the Directive. There is no chance of making mediation an attractive and effective way of solving disputes out of court if the quality of the process of mediation is not guaranteed in a way or another by law-

makers. The experience of countries where mediation is considered a simple activity (not a profession) and is not regulated (or very lightly regulated) shows that quality of mediation process vary on a wide scale and this contributes to the marginalization of mediation. As such, the Directive recommends:

1. *The Member States shall encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct by mediators and organizations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services.*
2. *The Member States shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties.*

Further on, the articles 5 to 8 contain provisions concerning the characteristics of the mediation process. First, it is important to note the recommendation for courts to send the parties to mediation, whenever the courts deem appropriate (Art. 5/1). More, the Directive does not oppose member states decisions to adopt legislation making recourse to mediation compulsory or "*subject to incentives and sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system*" (Art. 5/2). It means that, as long as the free access to justice is not affected, member states can introduce rules making the recourse to mediation mandatory. This provision contradicts the principle of voluntary access to mediation and also the principle of self-determination and it generated heated disputes following the implementation of this kind of measures in countries like Italy or Romania. The contradiction has not been solved to-date, highest courts in these countries striking down the mandatory measures as unconstitutional.

The use of mediation in cross-border disputes would be of no consequence if agreements reached in one member state would not be recognizable and enforceable in any other one. Accordingly, art. 6 of the Directive stipulates that "*the Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability*". The courts of the member states or any other competent authority designated by them are responsible for making the agreements enforceable.

Confidentiality of mediation is universally considered a key aspect of this method of dispute resolution. It is seen as one of the most attractive characteristics of the process and is consequently guaranteed by law in any country implementing it. For this reason, the article 6 of the Directive provides that "*Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of*

the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process".

Confidentiality is limited by to exceptions. First, confidentiality cannot be claimed in cases where the testimony of mediators is "*necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person*". Second, confidentiality is forfeited in cases where "*disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement*", a rather logical provision made by the creators of the Directive.

Of no small matter is the effect of mediation (or the recourse to mediation, to be more precise) on the limitation and prescription periods. As mediation is not to be considered a substitute of the judicial procedures and as recourse to mediation should not forfeit the right of the parties to "have their day in court", the Directive recommend that member states should make sure that recourse to mediation shall not in any form prevent the parties to initiate judicial procedures by the expiration of limitation or prescription periods. The intention of the lawmakers when adopting the Directive was not to replace judicial procedure with mediation in an "or/or" type of option, but as an "and/and" process, whereas mediation complements the courts in helping settle the disputes cost- and time-effectively.

The Directive 2008/52 aimed to create a common denominator for the implementation of mediation by EU member states, without infringing on national legislations already doing it. That's the reason for the relative vagueness of the Directive recommendations and for leaving a lot of space for particular approaches to be taken by national legislators. As the practice of mediation vary a lot from country to country and it is strongly affected by national culture in general and national juridical culture, with consistent differences between, for example, Northern and Southern European states, the task of the Council was not to standardize the practice of mediation in the EU, but rather to make agreements resulted from mediation recognizable and enforceable across borders. With this objective in mind, a minimal correlation of implementation, promotion and practice of mediation by member states, resting on a common set of principles, was considered essential for the success of this ambitious enterprise.

These minimum standards were to be implemented by member states in their legislation by no later than May 21st, 2011. Also, the member states were required to communicate to the Commission the measures taken to implement the recommendations of the Directive. By that date, all EU member states have proceeded to the task, with various degrees of success and compliance.

Implementation of Directive 2008/52/EC by EU member states

By July 15th 2011, the Committee on Legal Affairs has published the **Report on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts**, a document that sums up the efforts of the EU member states to transplant into their national legislation of the recommendation of the Directive 2008/52.

As expected, the results were far from being uniform. Some of the member states were praised by the Report for their diligence whether others were nominated for their apparent lack of enthusiasm for the implementation of the recommendations.

The Report noted that all member states had dutifully implemented the recommendations regarding confidentiality and the effects of mediation on the limitations and prescription periods. Also, progress had been made by the majority of the states regarding the procedures needed to give mediation agreements the same weight as a judicial decision but noted that, whereas some national legislators opted for the variant of submitting the agreement to courts, many other chose for the notarization of the agreement, as an option already existent in their national law. Slovenia and Greece are nominated as examples of the former variant (submitting to the courts) whether in Germany or the Netherlands agreements can be rendered enforceable as notarial acts (according to law provision). In Austria, agreements become enforceable as notarial acts even if this provision does not exist in Austrian law explicitly.

In terms of incentives and sanctions to render recourse of mediation by public wider, the Report notes that some member states had chosen to go far beyond the recommendations of the Directive. A number of states opted to include incentives in their laws for attracting the public to the use of mediation. In Bulgaria, parties received a refund of 50% of the state fee already paid for filing the dispute in court if they had successfully resolved a dispute in mediation. Hungary has similar provisions and in Italy "*all mediation acts and agreements are exempt from stamp duties and charges*".

Other states opted for sanctions, such as the impossibility of filling disputes into courts before the parties have first attempted to resolve the issues by mediation. Italy was given as a singular example for its Legislative Decree 28 "*which aims in this way to overhaul the legal system and make up for the notoriously congested Italian courts by reducing caseloads and the nine-year average time to complete litigation in a civil case; observes that, not surprisingly, this has not been well received by practitioners, who have challenged the decree in court and even gone on strike*". (To be noted: the Decree has already been struck down by Italy's Supreme Court of Cassation as un-constitutional).

The Report took note of the positive effects the mandatory measures apparently had upon the de-congestion of overwhelmed courts in various countries, but, nonetheless, recommended that "*mediation should be promoted as a viable, low-cost and quicker*

alternative form of justice rather than a compulsory aspect of the judicial procedure". There is still an ongoing dispute, involving scholars, practitioners and lawmakers, over the positive/negative effects of the mandatory measures in mediation, all parties citing all sorts of statistics to support their respective point of view. The contradiction between the voluntary character of mediation and the principle of self-determination, on one hand, and the mandatory measures taken to enforce the use of mediation on a wider scale, on the other hand, will not be easily solved in the near future, especially as solid, reliable data about the use of mediation and its impact on the judicial systems is conspicuously absent.

Research done by the author of this paper during the years 2013-2014 have revealed that there is almost impossible to find out, with a decent degree of precision, how many mediation cases occur in most of the member states. Establishing the number of mediators in EU is also a futile attempt (there are very few countries keeping accurate, if at all, national rosters), which makes unthinkable the measuring with any degree of accuracy and reliability the impact of mediation and mediators upon national judicial systems or of the success of mediation itself (Chereji and Gavrila, 2014). As such, coming up with solid arguments in favor or against mandatory measures is a daunting task, possible may be in a faraway future, when professional national bodies of mediators or institutions mandated to supervise and regulate the activity of mediators will begin collecting data in regularly and systematically manner. Just citing the increase of numbers of people coming to mediation following the introduction of mandatory measures (a rather tautological, circular argumentation) does not constitute credible evidence for the success of these measures.

The Report considered that there is a clear need to increase the awareness of the public regarding mediation, lack of knowledge about this procedure having a significant negative effect upon the recourse to mediation. The Report, in its final provisions, recommended that member states should step up their efforts of promoting mediation, considering that "*those actions should address the main advantages of mediation – cost, success rate and time efficiency – and should concern lawyers, notaries and businesses, in particular SMEs, as well as academics*". The focus of these actions should be the benefits of mediation for users, the fact that, in the words of the Report, "*mediation is more likely to produce a result that is mutually agreeable, or 'win-win', for the parties; notes that, as a result, acceptance of such an agreement is more likely and compliance with mediated agreements is usually high*" and "*parties who are willing to work toward resolving their case are more likely to work with one another than against one another; […] therefore these parties are often more open to consideration of the other party's position and work on the underlying issues of the dispute*".

A detailed analysis of the strategies adopted by each EU member state for the implementation of Directive 2008/52 in their national legislation was done by a team coor-

dinated by professor Giuseppe De Palo, president of the ADR Center, member of JAMS International, international professor of ADR Law and Practice, Hamline University School of Law, Minnesota and professor Mary B. Trevor, Director of Legal Research and Writing Department, Hamline University School of Law, Minnesota, in a book published in 2012 by Oxford University Press and called **EU Mediation Law and Practice**. This collective work present how the member states of the EU have decided to address the requirements of the Directive 2008/52, grouped in 9 major directions (De Palo & Trevor, 2012):

1. Court Referral to Mediation;
2. Protections Provided to Ensure Confidentiality of Mediation Proceedings;
3. Enforceability of Mediation Agreements;
4. The Impact of Mediation on Statutes of Limitation;
5. Requirements for Parties and Lawyers to Consider Mediation as a Dispute Resolution Option;
6. Requirements for Parties to Participate in Mediation;
7. Accreditation Requirements for Mediators;
8. Mediator Duties;
9. Duties of Legal Representatives and Other Professional Mediation Participants.

As a presentation, even brief and overly-general, of all member states would be far beyond the dimensions and the scope of this paper, there is still a need to understand how the recommendations of the Directive 2008/52 were translated at the level of national legislation. Consequently, and because the 2011 Report had praised Romania as an example of how it transposed the Directive into its own national legislation and how it built a functional mediation system from scratch, it is only natural to give this country closer look. This analysis will use a slightly different set of categories than the work of de Palo and Trevor (, for reasons related to the structure itself of the Romanian Law of Mediation and the relevancy of certain aspects of the Romanian strategy of implementation.

Implementation of Directive 2008/52/EC in Romania

Mediation has been brought within the Romanian judicial system through the Law 192 on mediation and the profession of mediation, law adopted by the Parliament in May 2006 (Chereji and Tanul, 2006; Chereji and Pop, 2014). The Law provided the general framework for the organization and the practice of mediation in Romania. It has been amended several times (in 2009, 2010 and 2012) to incorporate the recommendations of the Directive 2008/52 but also the experience gained during the period by the practitioners and the lawmakers in the field of mediation.

The core principles of mediation are embedded in the very first article of the Law which defines mediation "*a way of amicable settlement of conflicts, with the support of a third party specialized as a mediator, in terms of neutrality, impartiality, confidentiality and*

with the free consent of the parties", reflecting the definition adopted by the Directive, but going beyond it to nominated all the pillars of mediation process: neutrality and impartiality, confidentiality, voluntary nature and self-determination.

Court referral to mediation has been stipulated by article 6 of the Law, which originally provided that "*judicial and arbitration bodies, as well as other authorities with jurisdictional powers may inform the parties of the possibility and on the advantages of using the mediation procedure and may advise them to resort to this recourse in order to settle conflicts between them*". Later on, the expressions "may inform" and "may advise" were transformed into "shall inform" and "shall advise", adding an element of compulsion and making information by courts about mediation imperative.

A hugely controversial element of compulsion in the recourse to mediation was added in 2012, when mandatory attendance to information session prior to filling a dispute in court was introduced in the body of the Law. It required the parties (especially the aggrieved party) to attend an information session about mediation and to obtain a certificate of attendance from the third party making the information. This certificate became a required condition for the registration of a suit in court – the court would refuse to register the case in the absence of this certificate. Article 2 of the Law was modified to make reference to this mandatory information sessions and the types of disputes that required a certificate prior to registration in courts:

1) *Unless the law provides otherwise, the parties, natural or legal persons, shall be bound by the obligation to attend the information session on advantages of mediation, including, if necessary, after the onset of a trial before the competent courts, in order to settle this way the conflicts on civil, family, criminal matters, as well as on other matters, under the terms provided by law.*

(1^1) *The proof of attendance in the information session on advantages of mediation shall be given by an informative certificate issued by the mediator that has made the information. If one of the parties expresses in writing the refusal to attend the information session, does not respond to the invitation provided in Article 43 (1) or does not appear at the date set for the information session, a minutes shall be prepared, which shall be enclosed to the court file.*

(1^2) *The court shall dismiss the request for summons as inadmissible in case the applicant does not meet his obligation to attend the information session on advantages of mediation, prior to filing the request for summons, or after the onset of the trial by the time limit set by the court for this purpose, for disputes arisen on matters provided in Article 60^1 (1) a) - f).*

(1^3) *The carrying out of the information procedure on advantages of mediation may be performed by the judge, prosecutor, legal adviser, lawyer, notary, in which case it shall be attested in writing.*

(1^4) *The services provided according to the provisions of paragraphs (1) and (1^1) shall be free of charge, being forbidden to charge fees, duties or any other amounts, regardless of the title under which they might be requested.*

(2) *The provisions of this Law shall also be applicable to conflicts in the field of consumers' protection, in case the consumer invokes the existence of injury as a result of having purchased defective products or services, of failure to comply with the contract clauses or with the securities provided, of existence of certain abusive clauses included in the contracts concluded between the consumers and the economic operators or of infringement of other rights provided by the national law or the European Union law in the field of consumers' protection.*

The "mandatory information clause" became an element of discontent and harsh disputes occurred between mediators, lawyers, notaries, judges and lawmakers regarding various aspects of this clause and the practice of these sessions. Even more questionable was the effect of this clause upon the recourse to mediation by parties, with no significant data to prove an increase in the use of mediation compared to the period prior to the introduction of the clause. Eventually, in 2014, the Constitutional Court stroke down the clause as unconstitutional. Work is ongoing now in the Parliament to find a replacement of this clause with a more amenable and less divisive set of provisions regarding the recourse to mediation.

To ensure the quality of the mediation process (keystone of making mediation attractive to public), the Law provided that mediation cannot be practiced but by authorized mediators required to fulfill a number of conditions in order to be accredited. The accreditation body was designated the Council of Mediation, an independent organism, made of mediators and elected by mediators, in charge with all aspects regarding mediation in Romania. The conditions to become an authorized mediator were stipulated by article 7 of the Law:

The persons who meet all the following conditions may become mediators:

a. *they have full capacity of exercise;*
b. *they have university education;*
c. *they have at least 3-year length of service;*
d. *they are fit, medically speaking, to pursue this activity;*
e. *they enjoy a good reputation and have not been finally convicted for an offense committed by ill intention, likely to prejudice the prestige of the profession;*
f. *they have graduated from mediator training courses, under the terms of the law, or a post-university master-based program in the field, accredited according to the law and endorsed by the Mediation Council;*
g. *they have been authorized as mediators, under the terms of the law.*

Also, provision were made by the Law in order to ensure the professional development of mediators after authorization and the observance of them of a Code of Conduct able to guarantee the parties a fair and effective mediation process.

There are several provision with special reference to the safeguard of confidentiality. First, article 37 stipulates that:

(1) *the mediator can not be heard as a witness in relation to the facts or acts that he became aware of during the mediation procedure. In criminal cases, the mediator may be heard as a witness only if it has obtained the prior, express and written consent of the parties and, where appropriate, of the other parties concerned.*

(2) *The status of witness takes precedence over that of mediator, as regards the facts and circumstances of which he was aware before becoming a mediator in that case.*

(3) *In all cases, after being heard as a witness, the mediator may no longer conduct mediation in that case.*

Second, the agreement to mediate, signed by the parties and the mediator prior to the mediation sessions, must specifically point to the fact that the mediator has the obligation to keep the confidentiality about all matters concerning the mediation process (Art. 45 (d)).

Nonetheless, there are limits to the application of confidentiality rule. In criminal cases, as rape or other grave offenses (Sandu, 2014), confidentiality can be broken in the interest of the case. The same, there are special provisions by the Law concerning the protection of the superior interest of the child in mediation and the duty of mediator to safeguard them even at the cost of breaking the confidentiality rule (The 192/2006 Mediation Law, Art. 65 and Art. 66/2).

In terms of enforceability of the agreement, as required by Directive 52, the Law provides at article 59:

(1) *The parties may request authentication from the notary public of their understanding, under the terms of the law and in compliance with the legal procedures*

(2) *The parties to the mediation agreement may go to court to request, in compliance with the legal proceedings, to give a decision to legalize their understanding. Competence shall lay with the court in whose jurisdiction any of the parties have their domicile or residence or, where appropriate, the head office or the court of first instance in whose jurisdiction is located the place where it has been signed mediation agreement. The decision whereby the court consents on the understanding between parties shall be delivered in the Council Hall and shall be an enforcement order under the law. The provisions of Article 438 - 441 of the Law No 134/2010 of the Civil Procedure Code, republished, as amended, shall apply accordingly.*

As incentives for the parties to give preference to settlement through mediation rather than by judicial decision, the Law provides that, if the parties of a lawsuit solve their dispute using mediation, they will be fully refunded, upon request, for all fees they have to pay to fill the lawsuit.

Conclusions

Summarizing our analysis, it is clear that Law 192/2006 and its subsequent modifications brought by the Laws 370/2009, 202/2010, 76 and 115/2012 can be considered a model of transposing the recommendations of the Directive 2008/52 in the legislation of Romania.

What is not so clear is how this transposition influenced in a way or another the recourse to mediation in this country, where the use of mediation remains (as in all Europe) extremely limited, especially if compared with the recourse by public to judicial procedures. Statistics available in Romania regarding the use of mediation are partial, as there is only an official record of lawsuits solved through mediation, located at the level of the Supreme Council of Magistrates. Unfortunately, the Council of Mediation does not keep an independent and comprehensive record of mediation cases.

The limited statistics at our disposal confirm a growing recourse to mediation over the years following the adoption by the Council of Mediation of the first set of reglementations that built the present mediation system in Romania (the first list of accredited providers of mediation basic training programs, the first national roster of mediators, the Code of Conduct etc.). The growth can be assigned to natural, endogenous causes.

As for the impact of the mandatory information sessions, this remains hugely controversial. Statistics available contradict the supporters of the mandatory measures by showing no relevant increase in the number of mediation cases after the adoption of Law 115/2012 introducing these information sessions compared to the period before. Of course, more light would be cast upon this issue if the Council of Mediation were to conduct its own, independent recording of the mediation cases, instead on relying only on the very restricted collection done by the Supreme Council of Magistrates.

There is still an overwhelming bias of the public towards to courts of justice. Bringing mediation at equal stature and status is a matter of time and commitment of all stakeholders, not by forcing the public to use mediation no matter the type of dispute, the disposition of the parties towards an amicable settlement of their dispute and the type of relationship the parties have had prior and during the dispute.

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Africa: Ethics and Post-Conflict Peacebuilding

Nathaniel UMUKORO

Abstract. *Peacebuilding in post-conflict societies in Africa has been a major challenge in the continent since the end of the Cold War. What could be responsible for this? One of the greatest challenges of peacebuilding in post-conflict societies in Africa is making ex-combatants and victims of the conflict live peacefully by upholding the fundamental ethics of their societies. This problem arises because armed conflicts often erode cherished ethics in an attempt to subjugate an enemy. Most peacebuilding projects basically achieve negative peace (cessation of direct and physical violence) rather than positive peace i.e. the transformation of the inherent conflictual relationships, structures, practices and interactions in society). This article examines how reviving fundamental ethics (especially within the African context) in post-conflict peacebuilding process can help people live together peacefully. It begins with the conceptualization of ethics within the African context and how it contributes to peace. It further examines how reawakening fundamental human ethics in post-conflict societies in Africa can help to bring about sustainable peace. The article concludes with a discussion of how African ethics education can contribute to effective post-conflict peacebuilding.*

Keywords: *Africa, African Ethics, Conflict, Peacebuilding.*

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Introduction

The restoration of sustainable peace after violent conflict remains one of the major challenges worth taking up in post-conflict peacebuilding. The analysis of multiple experiments at peacebuilding reveal frequent failures or mixed results at best (Dobbins, Jones, Crane, & Cole, 2007; Paris, 2004; Duffield, 2007; Ismail, 2008). That is why Krause and Jutersonke (2005) concludes that "not only do about half of all peace support operations (including both peacekeeping and more expensive peacebuilding operations) fail after around five years, but

there also seems to be no clear idea of what 'success' or 'failure' actually means, nor of what an appropriate timeframe for measuring success might be" (p. 448). One of the impediments to the restoration of sustainable peace is that conflicting parties are separated from one another. Fear, suspicion, mistrust, hatred and misperception set in, as relationships that had been friendly, open and trusting, no longer are so. Walls go up, and negative stereotypes, hostility and the change in communication patterns set in, as people move farther and farther apart (Burgess, 2003).

Post-conflict Peacebuilding has assumed a significant place on the international agenda since the end of the Cold War. It is particularly important to Africa, where almost half of the 51 UN peacekeeping missions have been deployed in the post-Cold War era. That is why the chairperson of the African Union Commission, Jean Ping, said that "of the many challenges facing the African Union (AU) and Africa, the quest for peace and security is the most pressing". Several countries in Africa have been involved in internal armed conflicts resulting in human losses and suffering. For example, over 800,000 people were killed in the genocide in Rwanda in three months in 1994, and over 200,000 people killed in Burundi when violence erupted in 1993, in addition to the 200,000 people that lost their lives in what the United Nations described as "genocidal repression" in 1972 (Ngaruko & Nkurinziza, 2000). In Uganda, an estimated 800,000 people lost their lives over a 20-year period (1966-1986) of political autocracy, repression, and civil war (Museveni, 1992). Furthermore, Democratic Republic of the Congo (DRC), formerly Zaire, has witnessed the mother of all complex violent conflicts since the mid-1990s with an estimated 3.5 million lives lost in this continuing tragedy. It is estimated in 2000 that about 14 million people have been uprooted from their homes by conflict in Africa.

Violent conflicts in Africa have resulted in the destruction of human and physical capital and the interruption of economic activities by the war, the losses of stocks and related income flows are obvious direct costs. Direct costs also include the enormous amounts spent by the belligerents on military activities, effectively to destroy the countries human and physical capital. The large amounts spent on relief and eventual rehabilitation efforts by the government and the donor community essentially crowd out development spending. The damage to social capital, the weakening of the institutional infrastructure, and damage to the environment have an adverse impact on long-term economic growth and poverty reduction. Violent conflicts also damage the trust between individuals and the legitimacy of social institutions (Grootaert & Bastelaer, 2002). By engendering impunity and thus condoning serious crimes (murder, banditry, and rape), violent conflicts corrupts the fabric of the society, with the overall effect of lowering of ethical standards, creating an environment that breeds crime and corruption.

The severity and consequences of violent conflicts in Africa have necessitated the priority given to peacekeeping and peacebuilding by international agencies. Indeed, Africa has been the site of a large number of international and continental projects to promote

peace. In 2011, Africa hosted seven of the sixteen United Nations (UN) peacekeeping missions in the world. Also, the first five countries on the agenda of the United Nations Peacebuilding Commission, established in December 2005, are all African: Sierra Leone, Burundi, the Central African Republic (CAR), Guinea-Bissau, and Liberia. The first four cases before the International Criminal Court (ICC) are also all African: Uganda, the Democratic Republic of the Congo (DRC), Sudan and the Central African Republic.

Managing the complexities of post-conflict peacebuilding in Africa continues to be a major potential trigger of relapse to violent conflict. This possibility has become realer because of the minimal success that attended the demobilization and reintegration exercises in some countries. Consequently, this paper seeks to examine the relevance of African ethics in peacebuilding and how the inclusion of African ethics education in post-conflict peacebuilding activities can help ensure sustainable peace. The paper begins with the conceptualization of African ethics and post-conflict peacebuilding. Thereafter, it considers the challenges associated with post-conflict peacebuilding in Africa including the reintegrating and rehabilitating of ex-combatants who have committed atrocities during the conflict.

Conceptual Clarification

As rightly noted by Chafe (1994), "the primary requirement for debating anything is to understand first and foremost the critical thing being talked about" (p. 131). Consequently, this paper begins with the clarification of the concept of African ethics and post-conflict peacebuilding.

African Ethics

African societies, as organized and functioning human communities, have undoubtedly evolved ethical systems—ethical values, principles and rules intended to guide social and moral behavior. The ethics of a society is embedded in the ideas and beliefs about what is right or wrong, what is a good or bad character. It is also embedded in the conceptions of satisfactory social relations and attitudes held by the members of the society. It also manifests in the forms or patterns of behavior that are considered by the members of the society to bring about social harmony and cooperative living, justice, and fairness (Gyekye, 2010). Generally, the term African ethics' is used to refer both to the moral beliefs and presuppositions of the sub-Saharan African people and the philosophical clarification and interpretation of those beliefs and presuppositions.

African ethics before the colonial period encapsulates moral conduct in terms of attitude toward life, issues of human dignity and respect, and the understanding that an individual's humanity interconnects with the dignity and humanity of others (Mabovula, 2011; Muyingi, 2013). African ethics is defined by Wiredu (1995) "as the observance of rules for the harmonious adjustment of the interest of the individual to those of others

in society. It is the conceptualization, appropriation, contextualization and analysis of values within the African cultural experience" (p. 210). African ethics presupposes a regional ethics (Gyekye, 2010). For example, it is unethical for someone to rape, prostitute, commit suicide, or engage in homosexuality.

There are of course other moral concepts in the African moral language and thought. The concepts of good, bad (or, evil), right and wrong feature prominently in African moral thought, as they do in the moral systems of other peoples and cultures. In Africa, a person would be judged as having a bad *character* if he is considered dishonest, wicked, or cruel. In most moral evaluations, reference is made to the character of a person; thus, character is basic—the crucial element—in African, ethics generally (Gbadegesin, 1991). African ethics is, thus, a character-based ethics that maintains that the quality of the individual's character is most fundamental in moral life. Good character is the essence of the African moral system, the linchpin of the moral wheel. The justification for a character-based ethics is not far to seek. For, all that a society can do, regarding moral conduct, is to impart moral knowledge to its members, making them aware of the moral values and principles of that society (Gyekye, 2010).

Post-Conflict Peacebuilding

The notion of post-conflict peacebuilding is based on the philosophy that violent conflicts can recur after a short period of peace or even when conflict seems to have ended. Although the term 'peacebuilding' was coined by Johan Galtung in 1975 with the publication of *Three Approaches to Peace: Peacekeeping, peacemaking, and peacebuilding*, it first became part of the official discourse at the United Nations (UN) in 1992 when former UN Secretary-General Boutros Boutros-Ghali used the term in his *Agenda for Peace*. For Boutros-Ghali (1992), post-conflict peacebuilding was an activity to be undertaken immediately after the cessation of violence. He asserted that post-conflict peacebuilding was "an action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict" (Boutros-Ghali, 1992, p. 11). What Boutros-Ghali had identified as 'post-conflict peacebuilding' was not new. Similar post-conflict strategies, or interventions, were applied in the past. For instance, at the end of World War II, the United States, through its Marshall Plan, played a major role in the reconstruction of war-torn Europe and Japan. But what was novel in Boutros-Ghali's reformulation of the concept was the realization that the demise of the Cold War had, in fact, opened up new possibilities for the UN system to play a major interventionist role in bringing both short-term and long-term resolution to outstanding conflicts. Indeed, Boutros-Ghali was the first to suggest that contemporary peacebuilding ought to be integrally linked to other more traditional UN peace support activities, such as preventive diplomacy, peacemaking and peacekeeping (Boutros-Ghali, 1995). Post-conflict peacebuilding involves a wide range of activities that both precede and follow formal peace accords (Lederach, 1997).

Challenges of Post-Conflict Peacebuilding in Africa

Post-conflict peacebuilding is one of the major concerns of the international community since the end of the cold war. The results of these operations in Africa have been rather paltry, particularly as regards the establishment of self-sustaining institutions. In most cases, former belligerent youths remained marginalized with economic mismanagement rampant. In Burundi, for example, pockets of violence endured in 2007. In Côte d'Ivoire, the international community was unable to put an end to the conflict and reunite the country despite UN and French military deployments. In the Democratic Republic of Congo, the UN's largest state reconstruction mission, 17,000 peacekeepers and 2,500 European Union troops were unable to prevent violence in the wake of the 2006 elections, and conflict in the eastern region actually increased after the transition (International Crisis Group, 2007).

In Africa, corruption is the major challenge militating against post-conflict peacebuilding efforts. It undermines the legitimacy and effectiveness of state institutions and compromises key peacebuilding tasks such as disarmament and reconstruction. Corruption undermines the long-term goals of peacebuilding (Goodhand, 2001). As the international community has grown more involved in post-conflict peacebuilding, it has also become apparent that corruption deeply affects all aspects of the recovery process, including activities such as institution building, DDR (Disarmament, Demobilization, and Reintegration), reconstruction, and economic development (Kaufmann & Kraay, 2002). Corruption also encourages the perpetuation of war-time power structures and the unjust distribution of public resources.

Creating sustainable peace requires the disarmament of combatants and their reintegration into society. Corruption can easily undermine this process, especially if military and rebel commanders (in their capacity as official representatives) embezzle funds for disarmament, demobilization and reintegration (DDR) of ex-combatants (Ghani, Claire, Nargis, & Baqer, 2007; Swarbrick, 2007). In some instances, the international presence has even been accused of being complicit in corrupt behavior, as in the Congo's DDR program where Pakistani peacekeepers allegedly traded weapons in exchange for gold mined by the local militias (A UN enquiry later found evidence of gold smuggling, but no evidence of gun-running (BBC News, 2007).

Why African Ethics in Post-Conflict Peacebuilding

Violent conflicts often result in activities that erode societal ethics. For example, children born during periods of violent conflicts may think that acts such as stealing, rape and killing are normal norms of society. This can be buttressed with the assertion of Save the Children (2005) that "whoever wins the war children are always the losers and their lost childhood never comes back". Violent conflict is often a result of the breakdown of a society's mechanisms for dealing with change and mediating between

different groups. However, conflict may serve a variety of political, social and economic functions for individuals or groups. Many actors may have a stake in the continuation of conflict. Consequently, the idea that conflict will end as soon as a peace agreement is signed is unrealistic. Building peace is a process which needs to involve not just the leaders of rebel groups and the government, but representatives of all those who are involved or caught up, in a voluntary or involuntary manner, in the conflict. Building viable peace involves addressing the causes or 'drivers' of conflict so that conflicts do not re-emerge at a later date.

The persistence of conflicts in many places where peacebuilding has been carried out is an indication of both the overwhelming need for and significant difficulties in establishing conditions for sustainable peace (Keating & Knight, 2004). A plethora of actors is involved in such interventions, ranging from sub-regional and regional organizations to the United Nations. The goal of these institutions is not only to stem the upsurge in civil conflicts but also to prevent relapse when those conflicts are over (Stedman, 2002). Primarily, the challenge for these peacebuilding intervention measures is to find a way to dismantle conflict nurturing institutions and replace them with institutions that are capable of sustaining peace.

African Ethics is essential to post-conflict peacebuilding because of the effects of violent conflicts in African societies especially children, "the leaders of tomorrow". Many children in countries where violent conflicts have become a way of life are growing up without ever having known peace. They live in a world where schools have been destroyed and where dialogue takes place through the mouths of guns. For example, children born during periods of violent conflicts may think that acts such as stealing, rape and killing are normal norms of society. The following chilling conversation between a social worker and an ex-child soldier in Africa buttresses this assertion:

> DID YOU KILL? "No."
> DID YOU HAVE A GUN? "Yes."
> DID YOU AIM THE GUN? "Yes."
> DID YOU FIRE IT? "Yes."
> WHAT HAPPENED? "They just fell down."
>
> —*World Press Review, January 1996.*

The conversation above highlights the challenge associated with the involvement of children in warfare. In the past, when armies fought with spears and swords, a child had little chance of standing in battle against an adult wielding a similar weapon. But this is an era of lightweight weapons. Today, a child equipped with an assault rifle—a Soviet-made AK-47 or an American-made M16—is a match for an adult.

African ethics is essential for the promotion of reconciliation and co-existence. It also helps to ensure consideration for the socially vulnerable and marginalized groups such

as people with disabilities by conflict or landmines, orphans, widows, child soldiers, and internally displaced persons (IDPs). IDPs are sometimes prone to receive fewer peace dividends from post-conflict reconstruction, while these groups can make an active contribution to the process of reconciliation in the post-conflict as well as building fair and impartial societies (Obidegwu, 2004).

African ethics also promotes communalism as opposed to individualism. The heart of traditional African thinking about humanity is the idea of community. Many African proverbs express this idea. An example is the Shona proverb: 'A thumb working on its own is useless. It has to work collectively with the other fingers to get strength and to be able to achieve anything.' Collectivism is a community-based society where people are united, ideally among themselves, even to the very core of their being.

Post-Conflict Peacebuilding through African Ethics Education

African Ethics Education is essential for the re-orientation of victims of armed conflict, especially children. Education is perhaps the most important tool for engendering peaceful coexistence. It is the means by which successive generations develop the values, knowledge and skills for future political, economic, social and cultural development. African ethics education is important in post-conflict peacebuilding because of the negative effects of prolonged violent conflicts on education and societal ethics. For certain forms of conflict, educational institutions become part of the battleground of the conflict and often, the purposes of education become dislocated by war as students, and teachers, are recruited in conflict, interrupting their studies and significantly altering their lives. In Liberia, for example, one-fifth of those affected by the civil war were children, and children have been recruited into armed forces in Burundi and Sudan (Epstein & Limage, 2008). The most distorting effects of violence in education happen when school-age children are recruited as child soldiers to perpetrate violence.

African ethics education can be viewed as a socialization strategy after violent conflict. It is a form of education for peace. Brock-Utne (1989) defines the concept of education for peace as "education or socialization that results in more peace in the world or that at least has as a result the greater likelihood that peace will be the existing condition than the case would have been without that education" (p. 78). As a sociological term, socialization is defined as "the process whereby individuals become members of society or members of sectors of society. It is concerned with how individuals adopt the values, customs, and perspectives of the surrounding culture or subcultures" (Sturman, 1997, p. 528). It is through the socialization process that children learn about the society in which they live, the norms of that society, and how to effectively interact with others (Giddens, 2001; Goslin, 1969).

The inclusion of African ethics education in the curriculum of schools could help prevent violent socialization process. Violent socialization processes within the school

context might not only provide people with motivation and/or opportunities to use violence against other individuals and groups, but also make it more likely that such use of violence will be acceptable to them (Sugnami, 1996; Harber, 2004). Violent school socialization processes not only teach children about the acceptable use of violence, but can also play a role in the formulation of feelings of humiliation, shame, and revenge that may motivate and thus mobilize people to join rebel groups and participate in armed conflict (Davies, 2004). Such feelings may also push and keep young people out of schools, providing opportunities for individuals to engage in armed conflict (Dupuy, 2008).

African ethics education can also help to promote reconciliation. It involves the changing of destructive patterns of interaction between former enemies into constructive relationships, in attitudes and behavior. Reconciliation is a fundamental requirement in post-conflict peacebuilding. That is why Bar-Tal (2002), postulates that reconciliation "a psychological process for the formation of lasting peace". In this process, past rivals come to mutual recognition and acceptance, have invested interests and goals in developing peaceful relations, feel mutual trust, positive attitudes as well as sensitivity and consideration of the other party's needs and interests. According to Hayner (1996), "reconciliation implies building or rebuilding relationships today that are not haunted by the conflicts and hatreds of yesterday". To ascertain whether a process of reconciliation is under way in a post-conflict society, Hayner suggests that three areas can be observed: how the past is integrated and spoken about between former enemies; if relationships are based on the present or past; and if contradictory versions of the past have been reconciled – not into one truth of the past but to versions not based on lies and denial. Reconciliation can also be seen as "all initiatives which bring together, or engage, both sides in a pursuit of changing identity, values regarding interaction, attitudes, and patterns of interaction that move them to a more cooperative relationship (Merwe, 1999).

Conclusion

Violent conflicts usually damage the trust between individuals and the legitimacy of social institutions (Grootaert & Bastelaer, 2002). This poses a serious challenge for post-conflict peacebuilding. By engendering impunity and thus condoning serious crimes (murder, banditry, and rape), violent conflicts corrupts the fabric of the society, with the overall effect of lowering of ethical standards, creating an environment that breeds crime and corruption.

African ethics helps to promote peaceful coexistence. It encourages people to avoid actions that can lead to acrimony and violence. African ethics is usually inculcated in children through the socialization process. The situation is often different during periods of armed conflict. Children born during prolonged armed conflict, grow up to view

violence and other social vices as normal activities. This makes it necessary for African ethics education to be included as part of post-conflict peacebuilding. This can be done by including African ethics education in the curriculum of basic and high schools. The inclusion of African ethics education in schools will serve as a socialization strategy.

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Nigeria: The Bolstering of Boko Haram versus the State's Response

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Abstract. *As asymmetric warfare perpetuates in Nigeria, the resultant loss of life and destruction of public and private infrastructure attributed to Boko Haram has put Nigeria in the international spotlight. Although international support is being deployed to bolster Nigeria's efforts to repress Boko Haram's insurgency, mostly in the Northern part, attacks in other cities in Central Nigeria compel the need for more in-depth analyses to understand what fuels Boko Haram's growth, and determine the best approach to ensure Nigerians' safety in curbing the insurgency. This paper is premised on the assumption that factors sustaining Boko Haram have yet to be fully understood by policymakers and until that is done, restoring order in Northern Nigeria will remain elusive. The paper further argues that should Boko Haram be responsible for all attacks outside of their key areas in core North of Nigeria then their capability to destabilize Nigeria is yet to be contained. Lastly, that these attacks are, possibly, the emergence of unknown insurgent groups capitalizing on the fragile security situation to showcase the weaknesses of the Nigerian security forces and government as a whole. What needs to be done by the government is in part what this paper posits in its recommendations.*

Keywords: *Boko Haram, Nigeria, insurgency, security.*

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Emergence and bolstering of Boko Haram

With much critical ink being spilt on civilian-targeted attacks in Nigeria and little or nothing on the genesis, evolution and multiple factions within the extremist *Jama'atu Ahlus Sunnah lidda'awati wal Jihad* (People Committed to the Propagation of the Prophet's Teachings and Jihad) known by its Hausa name "Boko Haram", it is impor-

tant to situate the strength of Boko Haram to its origins and events which have fuelled its growth over the years. Mohammed Yusuf founded Boko Haram in 2002 against the alleged belief that a campaign of 'ethnic cleansing' was being waged by the then Plateau State governor, Jonah Jang, against the Hausa and Fulani people in the state (Walker, 2012). Muhammed Yusuf's (mis)perception that politics in northern Nigeria is a corrupt enterprise administered by false Muslims, spurred in him the desire to proselytize and reunite the greater Islamic Sahelian Kingdom, which includes parts of Niger, Mali, Chad and northern Cameroon. This became the signpost of the pre-2009 Boko Haram.

There had been other crisis prior to Boko Haram arising from societal dissent with ethnic, religious and/or discriminatory undercurrents in parts of the country. For instance, Kaduna and Jos-Plateau experienced violence that divided communities along Muslim and Christian lines or the more draconian 'indigene' and 'settler' classifications to differentiate original inhabitants from later settlers that determine access to social, economic resources discriminately (Oyeniyi, 2011). Thus, the government's initial dismissal of Boko Haram as an insignificant splinter has had costly implications. The deeply entrenched religious separatist movement which the federal government missed offers to negotiate is now struggling to contain. However, it is safe to say, the configuration of Boko Haram has changed post-2009. Pre-2009 was an era marked by very few violent targeted attacks and exclusively focused upon state institutions as against civilian hotspots as is the case today.

From 2009, Boko Haram metamorphosed into an enemy of the state. Its fights with the government led to the death of Mohammed Yusuf in controversial circumstances while in police custody and over 800 Boko Haram supporters. Symbolically, a mosque (Markaz Ibn Taimiyyah Mosque) that Mohammed Yusuf had built in 2002 and served as Boko Haram's headquarters was also burnt down during the offensive by government forces in July 2009. These events created a factional break within the movement. One faction became more closely interlinked with Al-Qaida in the Islamic Maghreb (AQIM) whose radical modus operandi ideologies and practices recommended the use of all means necessary to Islamize Nigeria.

Civil Society Organizations (CSOs), the media and other non-state actors equally did very little to raise awareness about the threat of Boko Haram from its inception. This can be due to the 'religious' character of Boko Haram, which disguised its risk. By standing by as Boko Haram tactics and configuration transformed from non-violence to destruction of state symbols and now systematic killing of civilians in hotspots, the CSO and media response has been reactionary (Muhammad, 2014). *#BringBackOurGirls*, a CSO-led campaign, is one of such initiatives that began after the worsening of the security landscape and, in particular, triggered by the shocking abduction of school girls while they slept. Indeed, the initial proponents against Boko Haram were Imams (i.e. Muslim clerics) who expelled Boko Haram's late leader Mohammed Yusuf from their mosques

in 2002 and those Imams, who were assassinated for speaking out against Boko Haram.

And as government repression became even more virulent, Amnesty International's finger pointing at the Nigerian government for the summary execution of about 950 Boko Haram militants and/or their sympathizers in 2013 further bolstered the support of Boko Haram by some Muslims in Northern Nigeria and in neighboring countries. The Nigerian government's ability to protect civilians has suffered great castration in the face of several successful attacks on churches, schools and police stations (Lobel, 2012). Furthermore, it should be noted that the Nigerian government's resort not to bring its war criminals to justice or guarantee a free and fair hearing for them is abating sympathy for Boko Haram, particularly in the North, where the fear of the merciless wrath of Boko Haram has coerced some into submitting to sharia. Amnesty International reported deaths including amongst others the death of Mohamed Yusuf in 2009 while in Police custody and depicts flaws in the Nigerian justice system and its inability to dispense with offenders of international humanitarian law in line with the Geneva Conventions and other standing international protocols.

The universal demonization of Boko Haram, following its April 14, 2014, abduction of nearly 300 girls in their school in Chibok, Borno State, Nigeria, culminated in the elevation of the group to being officially named as a Terrorist Organization under sanctions by the United Nations Security Council (Rogin, 2014). This means that in principle, Boko Haram or its representatives can no longer participate in any mediated settlements or dialogues intended to resolve the stand-off between Boko Haram and the Nigerian government or/and with the latter's international partners. Evidence of the fact that non-involvement in dialogue from the onset of the creation of Boko Haram to the failed military response of the Nigerian government is not the right solution to Boko Haram is being felt daily. Perhaps, it should be acknowledged that hesitant attempts to dialogue with Boko Haram by former President Olusegun Obasanjo, came a little too late after the former's fractionalization accentuated by the death of some of its members and the government's divisiveness which broke its epicenter. This staged some of its dissidents against each other in a squabble on whether to negotiate with the government which had desecrated Islamic principles maimed some of theirs and arbitrarily killed others (Alli, 2011).

Such attempts at brokering a peace accord or negotiate a ceasefire of some sorts with Boko Haram by the government, with the leadership of former President Olusegun Obasanjo, were not successful and in at least one case led to the killing of a man alleged to be an uncle to Mohammed Yusuf by suspected members of the Boko Haram sect. In recent times, there have been discussions of amnesty programs, but the major problem is the invisibility of Boko Haram and existing splinter groups or cells giving conflicting information about their willingness to dialogue and in many cases refusing to negotiate with a non-Muslim government. For instance, despite international atten-

tion and civil society action with the *#BringBackOurGirls* campaign, more attacks in rapid succession have occurred in the country and suicide bombings have increased exponentially in other places outside of their main zones. One of this zones was Jos, Plateau State, where Agence France-Presse reported that 2 bombs exploded concurrently in the busy central district killing an estimated 148 people (cited in The New Age, 2014). Another was Nyanya, a suburb in Abuja, Nigeria's Federal capital territory which became the target of two attacks on two different dates in the same crowded bus terminal (Onuoha, 2014). This shows that the 2014 demeanor of Boko Haram belittles the *#BringBackOurGirls* campaign in the same way that its successes underrate the efficacy of the government's or international response.

The *#BringBackOurGirls* campaign is arguably too-little-too-late to curb Boko Haram's attacks and is more designed to put pressure on the Nigerian government to expand its response to the violence and insecurity, especially as it affects women and girls rather than to illicit any change from Boko Haram. And if any window of opportunity was lost by the government of Nigeria, it was between 2009 and 2012 when it should have rooted out the insurgency. On 1 January 2012, it declared a state of emergency in the three northern states of Adamawa, Borno and Yobe, but failed to use that as an opportunity to inspire civilians and garner support against the re-strategizing and weakened and divided Boko Haram. It seems the government slept on its laurels and today suffers the effects of such a missed opportunity which would have been used to foster inclusive national dialogue or pursue a negotiated settlement with Boko Haram factions desiring the same.

Today, football, which before now united Nigerians especially when its national team (the Super Eagles) played in continental or world stage, is the bedrock of renewed attacks. Gathering to watch football matches in public places, in spite of the risks and threats of Boko Haram, cannot but be read as intrepid patriotism or addiction for the love of the sport. It is more likely today that damages ensuing from a bomb blast linked to Boko Haram would be reported at a public viewing site than it was in 2009. When a bomb went off in Jos at a viewing center during the finals of the European Champions League match between Real Madrid and Atletico on May 24, 2014 (City Press, 2014), it was a sign that other attacks would come. While bomb attacks occurred in Mubi, Adamawa on June 1st (Ola & Ande, 2014), and in Damaturu, Yobe (Hemba, 2014), the government decided to declare states of emergency, the risk of heightened attacks led to many state governments banning commercial viewing centers during the period of the FIFA World Cup in Brazil in June/July 2014. This led to reduced patronage of viewing sites, thereby reducing potential attacks.

As the international pressure builds on the federal government to strengthen its intelligence and find a lasting solution to the insurgency, the focus shifted to what the government is, in fact, doing to prevent more attacks and find the perpetrators. The

insecurity faced in the North, particularly the North-eastern part, means more attacks are less recorded and are beginning to be normalized as a feature of the crisis.

On June 8, 2014, Nigeria reported its first female suicide bomber who was intercepted on her way to a military barracks in Gombe but detonated the bomb at the checkpoint, killing herself and a soldier (Laccino, 2014). Four successive bombings took place in Kano State, between 27 and 30 July 2014 involving teenage female suicide bombers. While relatively small casualties have been recorded in these attacks, it showed a new strategy of Boko Haram to escape suspicion and detection of intending attacks since women in Northern Nigeria are likely to be dressed in full hijab and women have been perceived as victims rather than perpetrators. Then a 10-year old girl was found with a bomb vest strapped with explosives in Kano on 30 July 2014 (Pflanz, 2004) during a routine check, further raising alarms about Boko Haram's recruitment strategies. Boko Haram may be using female family members, including vulnerable girls married off early since child marriage is common in many Islamic communities in the North. It has also led to speculation that the female suicide bombers could be 'brainwashed' girls abducted by Boko Haram in Chibok, Borno State in April 2014 and who are still missing. Needless to say, the suicide bombings led to a ban on all public worship and celebrations marking the end of Ramadan fast, a notable feast in the Muslim calendar in Kano and some other states in the country, in an attempt to prevent more targeted attacks in crowded areas.

Concern for the abducted girls of April 14 and other women and girls that have been captured by Boko Haram in raids since the insurgency were heightened with the threat of Abubakar Sheu in a widely circulated video to sell and marry off the abducted girls. The United Nations human rights experts recognize that this exposes these women and girls to "sexual exploitation, forced marriage and sexual slavery" (OHCHR, 2014). Additionally, there is a risk that girls forcibly married off to Boko Haram members can be used for procreation, thereby creating the possibility of a future army of children dedicated to the insurgency cause. This is not to say that Boko Haram does not already have a breeding ground for potential recruits (CLEEN Foundation, 2014). It has capitalized on the situation of jobless youth and the *almajiri* in Northern Nigeria to have access to children and youth who join the group daily (Onuoha, 2014). The *almajiris* are children, mostly boys, who are sent by their families to learn the Quran under an Islamic scholar, but who beg on the street for alms. They are often hungry, destitute, unkempt and treated with disdain which makes them vulnerable to abuse. They are therefore susceptible to manipulation by those able and willing to meet their basic needs. As harmless as they may seem, many have become useful for gathering information for their 'masters'. The unequal and bureaucratic implementation of the federal government's policy on *Almajiri* education at the state level, aimed at building schools that integrated Qur'anic learning with modern teaching, means that few of the schools

have taken off with some states e.g. Zamfara having enrolled pupils and others yet to start enrollment (Awofeso, Ritchie & Degeling, 2003). Therefore, a majority of 9.5 million *almajiris* (Adetayo & Alechenu, 2014) in Nigeria are still left roaming the streets susceptible to radicalization and more exploitation.

Between 2009 and 2013, it was reported that at least 1,500 persons died in attacks linked to Boko Haram; the same number has already been reported by Human Rights Watch (2014) in the first quarter of 2014 alone, indicating more than anything that a rise in the intensity of the attacks and targets is to be expected. The only difference between the attacks pre-2013 and the post-2013 ones is the targets. While earlier attacks targeted religious building, such as churches, markets, state institutions' buildings e.g. police stations, the later attacks include schools, business complexes, bus stations and football matches viewing centers. Prior to the start of the FIFA World Cup in June 2014, there were bomb attacks or threats in viewing centers where football matches were to be shown live to the paying public.

It appears Boko Haram is changing and adapting its tactics, but there is also the possibility that 'copycat' groups are also using the current situation to push a political agenda. This is because, unlike in the past when Boko Haram took responsibility for attacks, there are many incidents that have occurred reported as 'likely Boko Haram attacks' to which the latter has neither confirmed nor denied its involvement. However, what is sure is that if the new and multiplied attacks are not Boko Haram's, the group would most definitely be celebrating that its attacks against the 'non-Islamic' governments are successfully multiplying. But if this is the case, who then is behind such attacks? And is the Nigerian government and international response systemically directed at Boko Haram effective or misdirected?

It is equally important to state that fewer efforts have been invested in investigating the global networks and means of communication used by Boko Haram to sustain itself. The flourishing trade in humans as bargaining chips has given credence not just to Boko Haram, but also to terrorist groups who believe hostage taking is a lucrative means of forcing states to negotiate and engage in trade-offs which are capable of sustaining them. As previously mentioned during the Mali insurgency, one faction of Boko Haram became more closely interlinked with Al-Qaida in the Islamic Maghreb (AQIM) whose radical modus operandi ideologies and practices recommended the use of all means necessary to Islamize Nigeria. AQIM, being itself inspired by Al-Qaida principles, helped to share strategies being used by the parent body to wreck Somalia (through Al-Shabaab) and parts of the Middle East.

Thus indirectly, some states negotiation policies may fuel terrorism. Therefore, the fight against terrorism requires negotiation based on principles that do not equate humans in monetary terms as is being done through ransom payments. On April 26th, 2013, BBC

News reported that over two million British Pounds were paid to secure the release of a French family of seven. Such payments provide a viable potential for Boko Haram to conscript mercenaries to help spread their propaganda; and to the large pool of unemployed Northern Nigerian youths, employment by Boko Haram is better than the unemployment under the government whose presence is dwarfed by systematic sporadic attacks directed at parents who are resistant to the epistemology of Boko Haram.

The porous nature of Nigeria's and the Sahel region borders is a challenge which most states are unable to deal with. This has served as a safe haven to many rebellions on the continent. The vast land mass of either thick rainforests or scorching deserts in Eastern Congo and Northern Nigeria are examples of largely hazardous places where state control is absent. These vast lands serve as training bases for rebellions and it can be safely said that Boko Haram has been very active in the borders of Cameroon where neither the Cameroon nor the Nigerian forces have proper surveillance. This is evidenced by the many hostages taken from these borders and clearly impeaches not just Nigeria or Cameroon, or Niger or Chad whose borders are corridors for strengthening the firepower of Boko Haram, but African states in general for doing little to consolidate the inviolability of their sovereign borders.

The lack of an international common position on defining who is a terrorist or a rebel is the birthplace for vigilante groups which, eventually, attempt to replace the states in providing security for the community. In recent cases like South Sudan, Riek Machar was labeled by major news outlets as a rebel leader and a couple of weeks later, he signed a peace agreement with South Sudan's elected president, Salva Kiir (Al Jazeera, 2014). More so, in Darfur, the Justice and Equality Movement (JEM), a group that employs terrorist tactics against the government, was recognized as the legitimate representative of the aspirations of the Darfuri people (Xinhua, in People's Daily Online, 2010). Such controversial demonization of figures and their subsequent recognition depicts some form of double standards. It could well be said that if Boko Haram had been engaged by the government of Nigeria from the onset, its demonization today would have been averted. The fact remains that in many cases when dissident groups are born, they are not seen for what they are. Their concerns are often undermined and thwarted as political conspiracies against a seating government. This breeds a response which cannot but be qualified as short-term and ill-conceived to avert the long-term implications of the rise of such groups on peace and security of the country, or parts thereof.

Overall, states must, out of necessity, be more responsive to dissident groups and employ dialogue before the transformation of dissident groups to rebellions and subsequently terrorist groups. In Africa today, and the world at large, many states experiencing economic pressures have seen more and more people call them to do more to guarantee economic and social rights through the provision of essential services, jobs and payment of decent wages. This paper contends that such contestations are likely to increase and

states need to find means and strategies to mitigate these issues otherwise rebellions and terrorist groups would outnumber contemporary obsolete methods being used to quell insurgents.

The efficacy of the Nigerian Government's response

The government's response has not matched the rising sophistication and strategic attacks by Boko Haram, whose post-2009 nature and scope has evolved from exclusively targeting state and international institutions to greater religious dimensions and emphasis on hurting both Muslim and Christian civilians, for example the Christmas 2010 church attacks, (The Guardian, 2014) suicide bombings in marketplaces, as well as indiscriminate 'drive-ways'. That Boko Haram attacks have proportionally increased in response to the 'heavy handed' military response by the Nigerian government, fundamentally beckons on a change of strategy. The government needs to acknowledge that, historically, the differential method of administration adopted by the Colonial government led to structural imbalanced developments between northern and southern Nigeria, with fundamentally different experiences of Nigerian citizenship. Northern marginalization, perpetuated by a system of 'oligarchy' rule by Northern leaders, which did little to correct the unequal standards of living between the leaders and ordinary people, formed the foundation of dissent and is linked in part to the motivation of the late Mohammed Yusuf to start Boko Haram – arguably, to establish a state that is responsive to the needs of its people under Islam. The tribal sentiment for a Northern presidency was flamed by the decision of President Goodluck Jonathan to run for elections in 2011 after completing the term of his successor President Yar'adua, who died while in office. The North's contention was that the ruling party, the Peoples' Democratic Party (PDP) had an unwritten policy on rotational presidency that ensured the leadership to alternate between Northern and Southern candidates. The arrangement worked when President Obasanjo, who was from the South, contested and won the 1999 elections and after two terms handed over to President Yar'adua from the North, who was nominated to be the party's presidential candidate for 2005. However, in 2010, this arrangement failed as President Goodluck Jonathan's presidential bid succeeded and he was elected President in 2011. It is worthy to mention also that the PDP-led government also had rotational leadership arrangement at all levels and that in 2011, when the Federal House of Representatives were selecting a Speaker, the PDP-led House failed to elect a speaker from The South-West where the position was zoned to, but instead elected Tambuwal who is from the North-West (Nwaneri, 2011).

The combination of these factors, historical, political and tribal, sprouted more visibly and gave rise to the current stalemate around how to dispense of the instability supposedly perpetrated by Boko Haram *notwithstanding suspicions that vigilante groups and political dissidents of the ruling elite have taken advantage of the security deterioration to craft for themselves a political space of operation.*

Secondly, it should not be forgotten that the opportunity to engage in dialogue with the faction that sought to receive compensation for the death of Mohammed Yusuf and followers in 2009 (Smith & Abubakar, 2012) was a strategic error on the part of the Nigerian government. This missed opportunity culminated a possible irrecoverable loss of an opportunity to neutralize, if not co-opt, a faction of Boko Haram. More critical is that, the post-2009-2013 era, the Nigerian government did not have an adequate response to counter the evolving nature and tactics of Boko Haram insurgency, as the movement began shifting the nature and severity of its targets from state institutions to civilian hotspots and religious safe havens. The state of emergency period saw no fundamental radical change in the approach of Federal Government, except for an increase in military repressiveness, which similarly led to civilian deaths and arguably inflamed further tensions of ordinary citizens in northern Nigeria against the federal government.

On 20 June 2014, The Presidential Fact Finding Committee, set up by the government of Nigeria on 2 May 2014 to investigate the Chibok girls' abduction of 14 April 2014, submitted its report to the President. While the report is yet to be made public on grounds of confidentiality and security concerns, the Committee's Chairperson, Brigadier General Ibrahim Sabo (rtd.), confirmed that of the 279 girls abducted, 57 girls escaped, while 219 girls are still missing. In April 2013, the government had also set up a Committee on Dialogue and Peaceful Resolution of Security Challenges in the North, that submitted its report in November 2013, with recommendations. This report has not also been released to the public.

There is no doubt that the Nigerian government has invested a lot in military intelligence and defense strategy to counter Boko Haram's incursions. The government and military commanders have boasted about arresting several followers of Boko Haram. This perhaps has been a strategic victory which hurts Boko Haram and, in turn, prompted the latter to request the release of some of their captured militants in exchange of the over 200 abducted girls. But how well this strategy is working in the face of widening insecurity across Nigeria where no state can claim to be safe from Boko Haram's systematic civilian attacks is a moot point. First, government critics argue that Nigeria spends less on its military defense than many other Sahel countries fighting terrorism and transitional criminal activity (Moran, 2014). Secondly, from 2009 until the State of Emergency in 2013, the Nigerian government's loss of an opportunity to engage in dialogue carved the way for indiscriminate warfare to counter Boko Haram by firing indiscriminately into suspected Boko Haram hideouts and killing many civilians with little to no accountability. Thirdly, during the year-long state of emergency, the government never developed a comprehensive top-down or bottom-up military strategy to counter Boko Haram, and only recently under the patronage of France did they formally engage neighboring countries on a regional strategy. The latter has been criticized by

African civil society organizations who argue that reflections on African peace and security are unjustifiable anywhere but in Africa. And so, President's Goodluck Jonathan's goodwill to facilitate a regional response was not well received and projected him as weak without external support.

The above has further been worsened by mixed-government signals which on the one hand are offering amnesty for Boko Haram members that put down their arms and, on the other hand, has said that it will not negotiate with terrorists. This has even further distanced those who would ordinarily contemplate a dialogue or truce, as there is no clarity on the steps government intends to take.

The continued armed offensive is also an option the government is exploring together with military and security intelligence from the United States (US), United Kingdom (UK) and France. But it is clear that the families of the girls would rather want the prisoners to be released and their children returned to them in the same way as the Nigerian populace is growing impatient with the government strategy which cannot prevent continued impromptu nationwide explosions.

Until now, Boko Haram was quick to claim responsibility for its attacks, but in the last couple of attacks, especially those occurring in states in the Central/Middle-belt region, it has not expressly done so. It may be argued that this is so because Boko Haram is now cornered and cannot freely communicate or upload videos on the internet. It may also be argued that Nigeria's insecure environment is incubating emerging insurgent groups which have capitalized on the Federal Government's exclusive focus on Boko Haram to demonstrate the weakness of the state and its inability to adequately protect civilians.

The government of Nigeria's decision to increase security checkpoints, cancel public events on key national dates such as Independence Day and to introduce metal detectors in public places, including churches and mosques, has had little impact on preventing these attacks. If at all, it has increased a heightened fear and intolerance among the public. This tense environment was also an early warning sign of the propensity for violence ahead of Nigeria's general elections in March 2015. The general sense of insecurity has led to more people resign to the fact that they would need to provide their own security and has also encouraged the growth of vigilante groups who can easily become oppressors rather than defenders of the people.

Therefore, the Nigerian government's response to the Boko Haram insurgency should be directed at:

1. Preventing further attacks from taking place through facilitating a national inclusive dialogue which seeks to suggest ways of collectively responding to the challenge that Boko Haram poses to the Northern States and Nigeria as a whole.
2. Recognizing the role the community has taken in policing its environment and that they can be a source of information to the Nigerian security operatives. The locals

know their forests and villages and with some training can act as guides in mixed missions to stop repeat insurgency attacks. Recent responses by some vigilante groups have shown that when the communities took up arms and fought the insurgents, repeat attacks and intimidation ceased.

3. Borders Policing and Monitoring in collaboration with neighboring countries. With the exception of Cameroon, all the other countries bordering Nigeria are in the Economic Community of West African States (ECOWAS) region. The existing frameworks in ECOWAS can provide the platform for training and coordination of a border police or other mechanism that covers the region with a separate agreement for Cameroon on sharing of information, intelligence reports and capacity building of security personnel on strengthening the borders and effective monitoring of movement of arms and people.
4. Exploring the role of peace mediators selected from the communities most affected by Boko Haram as intermediaries between the State and Boko Haram in an effort to broker peace and national reconciliation.

Points to Ponder and Conclusion

Nigeria now finds itself in a dangerous place where every attack and every threat is linked to Boko Haram. There are allegations that splinter groups have emerged and capitalizing on Boko Haram by shielding their attacks and reigning in invisibility. During the political campaigns leading to the 2015 general elections, supporters of then President Goodluck shared messages that the 'president's enemies' are using the latest Boko Haram inspired violence to score cheap political points and make the country ungovernable. President Goodluck Jonathan has had to bear the brunt of inflamed elites in the North who see his emergence as President following the sudden death of President Yar'Adua in 2010 and his subsequent election in 2011 as a flagrant disregard for the PDP-led government's party policy on rotational presidency between the North and the South. As a southerner, proponents of rotational presidency argue that he had breached this arrangement by occupying a 'second' term belonging to a northerner i.e. following his decision to contest in the 2011 elections and winning his first term in office. The possibility of him running for a second term in 2015 had raised more alarm and dissent in the North. This perhaps led to some sympathy for Boko Haram in certain areas and in others an opportunity to discredit him and champion Northern candidates for the presidency. More worrisome, some had echoed the call that the country risks losing its 15-year run of uninterrupted civilian rule by the threat of a military uprising leading to a coup if the Boko Haram attacks do not end. The 2015 elections and the emergence of President Buhari has cleared these concerns. However, as Nigeria navigates the current crisis, the price to pay in stability is already higher than it would have cost if effective dialogue with Boko Haram and affected groups had taken place sometime earlier.

Lastly, the situation is alarming, to say the least, and while many people living in the North of Nigeria, especially the North-Eastern states of Borno, Yobe and Adamawa have been most affected, the initial resignation of the people to their fate is slowly but surely being replaced by a brutal survival strategy with the emergence of vigilante groups since security forces have failed to save them. However, this does not seem a viable or sustainable defensive against the instability Boko Haram has caused not only in Nigeria but around its borders. This further exposes countries in the West African and the Sahel region to transnational crimes, including slavery, which the supposed leader of Boko Haram had also alluded to. We must not forget that this region is still fragile as a result of the Malian crisis and the ever present fear of growing influence of AQMI and other Al Qaeda-related groups in the Sahel. A strong and effective response to addressing Boko Haram in Nigeria would also contribute to resolving ongoing conflicts elsewhere in the continent, including Central African Republic, Mali and Darfur-South Sudan, where transnational crime such as human trafficking and drug trade are principal threats to long-term peace and stability.

Until the federal government and its security agencies are able to secure the territory and effectively demobilize Boko Haram and its cells, the rising number of deaths and wanton destruction of property will only lead to an, even more, dangerous path to war, anarchy and disintegration. This will serve no one and cause untold suffering and damage to a country whose stance in Africa provides stability and support.

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Romania: Conflicts between prison employees in Satu Mare Penitentiary

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Abstract. *This article reports the results of a survey on the conflicts the staff of Satu Mare Penitentiary is facing at their day to day jobs and the causes that generate them. The questionnaire attempted to determine the most significant problems in daily prison activities, the methods used to manage work related (recurrent) disputes among employees and the most important features of the prison environment that lead to stress and conflict.*

Keywords: *Satu Mare Penitentiary, organizational conflict, survey.*

Introduction

Mc'Shane (1993) notes that starting with the 1980's scholars tended to de-emphasize the inmate issues and focus on the conflicts between officers and between officers and administrators. This trend was set and put in motion once many scholars observed and noted that the correctional institutions are conflict-prone organizations. Powelson et. al., cited by Zald (1962, p. 22-23), among others, have described in detail some of the conflicts that may develop and manifest between the professionally trained treatment employees such as social workers, psychiatrists, medical staff or psychologists, and lay personnel (cottage parents, attendants, guards, other security personnel). The conflicts in such environments arise out of the

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incompatible requirements of the custodial and the treatment staff, and the goals they must serve inside the prison unit they work in. Conflict is an inherent, and some would say natural, part of this phenomenon, like any other business or employment relation. Modern organizations are dynamic, made up of people with increasingly diverse backgrounds, opinions, values and expectations about work, but often the tension to manage these emotions and the responsibility can lead to disputes,which in turn can lead to conflicts (Sandu, 2015).

Bennett (2012) observes how until relatively recently, prison research tended to focus mainly on prisoners and the effects of imprisonment. In such researchers, staff variables were invisible but mostly subsumed within the broader concerns. He mentions that "the study of prison staff may be considered marginal or a distraction. It could be argued that the primary focus of prison research should be prisoners, since they are the people who are most significantly affected by the prison experience" (p. 1). The lack of attention given to the ones taking charge of the prisoners is especially true in the Romanian context.

With these observations in mind, an idea started to grow: a research regarding a "virgin land", or a "special" kind of organizations. Specifically, a research inside the prison, focused on prison employees. Although different evaluations of prison officers were conducted yearly by the Romanian National Penitentiary Administration regarding stress and stress management, work satisfaction, offender-staff relationship, etc., there is no research regarding the conflicts between the staff members.

This article reports the results of a survey of the conflicts the prison staff is facing at their day to day jobs and the causes that generate them. The questionnaire attempted to determine the most significant problems in daily prison activities, the methods used to manage work related (recurrent) disputes among employees and the most important features of the prison environment that lead to stress and conflict.

Organizational Conflict

Organization – definition and structure

In *Taking charge of organizational conflict,* David Cowman (2003) defines organizations in a simple, yet relevant, way: "organizations are only structures into which we place people to produce outcomes. Any success or failure we assign to an organization is only the reflection of the success or failure of its people" (p. 7).

Weihrich, Cannice and Koontz (2010) defines organizations as "a formalized intentional structure of roles and positions" (p. 174). Nelson and Quick (2013) believe that organizations are "open systems of interacting components in which people, tasks, technology and structure come together for a purpose. These internal components interact with external components in the organization's task environment such as competitors,

customers, and vendors. Taken together, organizations are open systems inside which, people, technology, structure and purpose interact with an environment" (p. 9).

So, as we see from this definition, an organization's components are: people (its human resources), technology (represented by a wide range of techniques, tools, knowledge that are used to transform the inputs into outputs), structure (represented by the system of authority, communication, and workflow). The above-mentioned task environment comprises the following elements: the lawmakers, suppliers and customers (Nelson & Quick, 2013). How does an organization system work? Basically, the organization uses its inputs (capital, material and human resources), converts them in throughputs in order to deliver to its task environment outputs, in the opinion of the same authors (2013, p. 9). "Throughputs are the materials and resources as they are transformed by the organization's technology component. Once the transformation is complete, throughputs become outputs for customers, consumers, and clients" (p. 9).

Writers distinguish between the *formal* and *informal* aspect of an organization. Weihrich et al. (2010) believe that "formal organization means the intentional structure of roles in a formally organized enterprise" (p. 174). According to Nelson and Quick (2013), the formal organization refers to "the official, legitimate and most visible part that enables people to think of organizations in logical and rational ways" (p. 9). It is also described as "the *lines* [...] that can be drawn to show official relationships and power structures and workflows and channels of communication" by Katzenbach and Khan (2010, p. 3).

The informal organization refers to the relationships, space, and behaviors that exist outside the formal lines, in Katzenbach and Khan (2010, p. 3) view, while Weihrich et al. (2010, p. 175) describes it as appearing through the informal interaction between employees, that develops into a network of interpersonal relationships, that do not appear on the organization chart. As a definition of informal relationships, we consider that Weihrich's et al. (2010, p. 186) fits best to the purpose of this document: "informal organization is a network of personal and social relations neither established nor required by formal authority, but arising spontaneously".

According to Weihrich and Cannice (2010) the hierarchy of any organization is crowned by its top managers, and it applies to any kind of organization worldwide: small or large organizations, to manufacturing as well as service industries, to profit or not-for-profit enterprises, and that the term enterprise refers to a business, government agency, hospital, university, and any other type of organization. Weihrich and Cannice (2010) define management as the process of designing and maintaining such an environment in which the individuals, working together in different groups, accomplish in an efficient way selected aims.

As a manager (no matter the organizational level), one carries out the managerial functions of: organizing, planning, leading, staffing, evaluating and controlling. These

complex activities and the aim of management itself are the same in any type of organization and any level of it: to create surplus. "Managing is concerned with productivity, which implied effectiveness and efficiency" in Weihrich's and Cannice's view (2010, p. 4). They also show that the managers are the ones charged with the responsibility of taking actions that can and will enable the individual employees to make their best contributions to the group objectives.

Organizational conflict

Just as other multiple authors, Rahim (2015) believes that "conflict is inevitable among humans. It is a natural outcome of human interaction that begins when two or more social entities (i.e., individuals, groups, organizations, and nations) come in contact with one another in attaining their objectives. Relationships among such entities may become incompatible or inconsistent when two or more of them desire a similar resource that is in short supply; when they have partially exclusive behavioral preferences regarding their joint action; or when they have different attitudes, values, beliefs, and skills. Another definition of conflict would be "*perceived divergence of interest*", a belief that parties' current aspirations are incompatible" (p. 1). Greenwald (2008) emphasizes the previous idea, by stating that "conflict of an interpersonal nature is familiar to almost everyone. Individuals lock horns over office space, personnel, and money. Disagreements arise over how best to do a job, or solve a problem" (p. 59). Cowman (2003) believes that conflict is the natural process through which people mediate all of their differences.

According to Zald (1962), "problem-solving organizations are likely to be conflict-ridden organization. Even if the overt conflict is raised or maintained in problem-solving organizations, however, some kinds of tension may be lowered – those tensions that result from feelings of injustice and misunderstandings and that lead to subversion of goals and avoidance of rules" (p. 48). Scholars in organization theory became interested in the scientific investigation of conflict phenomena during the later part of the last century, and they appreciate that once we recognize that conflict is an important concept within the society, we can take a closer look at the phenomena of organizational conflicts (Rahim, 2015).

Cowman (2003) emphasizes that "organizations are rife with opportunities for conflict. All the individuals who are a part of an organization, or who have any interest in involvement with it, bring to the organization the accumulation of everything they've learned – all of their habits and all the beliefs they've developed about themselves, other people, and their world. Such diversity makes conflict inevitable. And because the conflict resolution skills of most people are poorly developed, the outcomes of conflict are frequently negative – at times even destructive" (pp. 26-27).

Pondy (1976), cited by Rahim (2015, p. 1), mentioned that the theories on organization "that do not admit conflict provide poor guidance in dealing with problems of organi-

zational efficiency, stability, governance, and change, for conflict within and between organizations is intimately related to either symptom, cause, or effect, to each of these problems" Baron (1990), cited by the same Rahim (2015, p. 1) emphasizes that "organizational conflict is an important topic for both managers and for a scientist interested in understanding the nature of organizational behavior and organizational processes".

The classical organization theorists "did not seem to appreciate different impacts that conflict can have on the organization. They implicitly assumed that conflict was detrimental to organizational efficiency and, therefore, should be minimized in the organization and they also prescribed organization structures – rules and procedures, hierarchy, the channel of command, and so on – so that organization members would be unlikely to engage in conflict. This approach to managing organizations was based on the assumption that harmony, cooperation, and the absence of conflict were appropriate for achieving organizational effectiveness (Rahim, 2015, p. 7). "Classical organization theorists, except Follett, did not incorporate a conflicting variable into their models. […] this approach to organization and management dominated the literature during the first half of the last century" (Rahim, 2015, p. 9).

The behaviorist school of thought changed the way scholars though and approached the world in general and implicitly that of organizations. "Behavioralists accept the presence of conflict and even occasionally advocate the enhancement of conflict for increasing organizational effectiveness. But they have not actively created conditions that generate conflict in organizations – believes Robbins (1974), cited by Rahim (2015, p. 10). This philosophy was closely followed by the interactionist theory, which stated that conflict is necessary, and opposition should be encouraged in organizations. In this approach, conflict management was defined to include stimulation and resolution methods, as conflict management was considered a major responsibility of all administrators (Rahim, 2015).

Just like the classical scholars, "the neo-classical or human relation theorists also considered the conflict to be dysfunctional but they tried to eliminate it by improving the social system of the organization. The modern view of the conflict, however, is that it is not necessarily dysfunctional for organizations. A moderate amount of conflict, handled in a constructive fashion, is necessary for attaining an optimum level of organizational effectiveness" – concludes Rahim (2015, p. 10).

According to David Cowman (2003) conflicts in the organizational environment not only affects the directly involved parties; it also has strong impacts on those who indirectly are being involved in it – the so-called "innocent bystanders", as everyone connected to a conflict may be, and usually is affected on a personal level.

"Conflicts within organizations may involve disputes between departments and units. Technically trained individuals may chronically differ in outlook from business-ori-

ented personnel. *Interpersonal* conflict may be neither the most basic nor the most significant form of conflict observable in an organization. Gender and ethnicity may become the focus of conflict, as women and minorities are excluded from leadership positions. Individuals stuck in positions that do not utilize their talents and skills, or who experience the organizational climate as hopeless or "dehumanizing", feel themselves in conflict with the structure that surrounds them. Individuals exposed to adverse stimuli from these sources experienced conflict not with other members, but with the organization itself" (Greenwald, 2008, p. 59). Regarding these aspects, it has become obvious recently that scholars from various disciplines present a growing interest in teaching and research on conflict in the organizational field, that managers are interested in learning more about organizational conflict and its management and as such, that conflict management skills are gaining ever-growing importance for managers (Rahim).

Greenwald (2010) feels that the most intricate conflict within an organization stems from competition for control over the purpose that the entire or a part of an organization should follow. He differentiates between the interests of the organization's leadership and stockholders or the lower ranking, thus restricting their input and access to information or profit, or using the organization's resources for the purposes they favor. Another competition over power in the organizational environment in the same authors' view may also occur between skilled employees or subgroups that can employ the assets of a union or human rights or environmental organization to support own goals.

Penitentiary Staff in Romania

According to the presentation brochure of the NAP system, in Romania, there are 32 prisons, two re-education centers for under-aged offenders, three detention centers for youngsters /women, six hospital-prisons. In the Satu Mare Penitentiary, offenders serve their sentence in half-open and open regime systems. A few words on each are needed for a better understanding of the work of prison staff in such units. Serving sentences in half-open regimes means one can have the liberty move around unaccompanied, in pre-defined areas of the prison, as there are many spaces that are not closed in such a facility: more than one library, shop, medical offices, gym, court-yards, detainee club. The open regime system houses offenders with a maximum of one year (left) of the sentence that are also free to move around the predefined spaces of the prison. Detainees in both regimes may get involved in re-educational activities, counseling programs, religious, cultural, educational, vocational, or hobby activities. Basically, in these two regimes, the prison staff operating in the operational field is surrounded during the daytime by offenders, and may have direct physical contact with them.

In each Penitentiary, there are multiple work fields: *the operational field* – also called the detention security and prison regime function. Staff working here is charged with

the safety and security of the offenders, the other categories of staff, and the community (by preventing escapes). This entails guarding the perimeter, supervising the movement of the offenders, making sure they do not change rooms, and generally respect the prison rules. Staff in the operational may be medium or high education employees, with or without previous work experience. The *social reintegration department* is charged with organizing and carrying out of activities that would prepare the offenders for their reintegration into society, starting with the first day inside the prison cell. Thin entails are preparing him to cope with prison life and rules, offering them educational and psychotherapeutic activities, counseling, or other social services that the offender as a citizen is entitled to. The specialists working in this field are exclusively university graduates: psychologist, social workers, teachers, sociologists and/or graduates of theologies. The reintegration staff carries out their day to day activities (both individually or in groups of maximum 20 offenders) in direct contact with the offenders without being accompanies by security staff, as many of these activities are based on the sharing of confidential information.

The *health care* staff: mostly doctors and (mostly female) nurses that provide 24/7 health assistance; they are in direct contact with the offenders, mostly unaccompanied by security personnel. The *administrative staff* also comprises contractual employees that seldom or never come into contact with prisoners. We refer to the economic department, secretarial department, human resource, P.R, IT, logistics, etc. – both without and mostly with university studies.

In Romania, prison staff is divided into three categories: officers (which are trained in basic psychology, criminology, criminal law as graduates of the Police Academy), junior-officers (the new employees that graduate the school I have mentioned in the previous paragraph) and administrative personnel (either contractual or direct employees of the Penitentiary). Prior to Romania's admission into the European Community, the restructuring of the prison staff was a must, so that many of the prison officers and sub-officers were discharged due to abusive behaviors, alcohol abuse during work hours and tendencies towards violence – according to Holly Carter (USA: Human Rights Watch, 1992, p. 20).

One may easily find out what it takes to become part of the prison staff: being a Romanian citizen and having Romanian residence, they know the Romanian language, 18 years old and high-school studies as a minimum, medically and psychologically apt for prison work, haven't been convicted, meet the height and other pre-set criteria, haven't been discharged of previous jobs on disciplinary causes in the past seven years, have had adequate behaviors legally and socially, haven't been collaborating with the security forces of the communist regime. After being admitted at all of the tests that prove the above-mentioned aspects, future employees follow a year-long preparation in special units: at Târgu Ocna National School for the Preparation of Prison Junior-Officers that

ends with a final physical and testing knowledge evaluation. The promotion of the finals leads the newly employed prison employee to the penitentiary of its choosing… and the rest is a mystery.

"Officers receive training at the university level, in the form of four-year courses in the police academy; alternatively, they may have a degree, having acquired specialized training in various fields instead of employment experience. Junior officers follow one-year specialized courses in the military school for the training and advanced training of subordinate prison officers, but there is also the possibility of co-opting persons with different occupational backgrounds, who will then receive training in the form of three-month crash courses" (Council of Europe, p. 132). Around 190 men and approximately 30 women graduate the Târgu-Ocna training school every year, adding to the ranks of the prison staff. Most of them have had a previous job in different work fields while others have turned to this profession after graduation their education.

As in the case of offenders, life behind the prison entrance is pretty much an obscure area for most people. If offenders are viewed as people subjected to numerous and unnamed agony, spending their time in half-light, in an environment where screams haunt the hallways, how does that image describe the prison staff?

The Survey

Methodology

This article reports the results of a survey of the conflicts the prison staff is facing at their day to day jobs and the causes that generate them. The questionnaire attempted to determine the most significant problems in daily prison activities, the methods used to manage work related (recurrent) disputes among employees and the most important features of the prison environment that lead to stress and conflict.

The research started with two hypotheses:

- in the Satu Mare Penitentiary employees often find themselves involved in conflicts with peers and superiors due to work related stress,
- most of the conflicts between the Satu Mare prison are latent and contribute to the tension within the work environment.

In order for the research to be possible, a series of special conditions needed to be met: the approval of the Satu Mare Penitentiary, based on an approved project concerning the survey, the written or oral consent of each employee to its superior was needed in order to answer the questionnaire.

Though the Satu Mare Penitentiary has 189 employees, only 66 participated in this survey. As such, one of the limits of this survey is that it may not be representative for the Satu Mare prison staff overall. 18 questionnaires were invalidated, as one or more

questions remained entirely or partly unanswered. Respondents represented 34.9% of Satu Mare Penitentiary's prison staff.

Another limitation of the survey consists in leaving a time gap between conflicts that occurred in the 3 to 12-month period, and disputes that are being referred to generally. This gap has become evident once multiple respondents (different ones) gave answers to two questions that were initially meant to be responded at only is the answer to previous two questions was YES. The gap left respondents the possibility to refer there an answer to conflicts in general. Thus, though only 13 respondents have been involved in conflicts in the past three months, 25 prison staff answered the subunit question. So the descriptive results in this matter cannot be referred as being valid for the time frame the questionnaire has set (3 months).

Describing the sample

In any prison in Romania, the operational and administrative departments comprise the highest numbers of employees. The respondents to the questionnaire were selected as follows: 56.1% activate in the operational field (their specific activities were listed in the previous pages), 27.3% work in the administrative department of the Satu Mare Penitentiary, 10.6% are Social reintegration staff, while 6.1% belong to the medical staff.

From the total of 66 respondents, 22.7% have graduated a form of secondary education, while 77.3% have university degrees. Of the later, 31.8% are law and 18.2% social science graduates.

When the seniority of the employees is concerned, 3% of the respondents are just recruited (under 1 year of activity so far), 9.1% have had 2-5 years of prison work, while 19.7% are close to the end of their activity as prison employees, as they have worked in the prison for over 20 years. 34.8% of my respondents have a 5 to 10-year activity, and 31.8% between 10 and 20 years as prison employees.

The administrative department is predominated by Law (10.6%) and Finance/accountancy (9.1%) graduates. There are also 1.5% social studies and 4.5% other higher level university graduates among the respondents

In the operational field only 19.7% of the respondents have secondary level studies, while 80.3% have university degrees: 19.7% in law, 7.6 in social sciences, 1.5% has finance/accountancy diplomas, 1.5% have graduated from more than one specialization and 6.1 have shown that they have followed "other" type of university studies.

7.6% of the employees from the Social reintegration department are social science graduates, 1.5 have law studies, while another 1.5 are secondary level graduates. 1.5 of the medical employee respondents have social science studies, while 4.5% indicated "other" as a form of studies. If we consider the prison employee legal status, one may conclude that in the medical department, those other studies are: nursery or medicine.

Related to the seniority of the employees, the latest staff recruit (*under 1 year* of prison work experience) works in the administrative department, all the recruits with *1 to 2 years of seniority* work in the operational field.

Respecting the numbers of employees of each of the department inside the Satu Mare Penitentiary, the respondents with *2-5 years of work* in the penitentiary were selected as follows: 50% in the operational department and each of the administrative, social reintegration and medical department have 16.7% respondents.

The sample comprises 57.1% staff with *10-20 years seniority* working in the operational department, 33.3% in the penitentiary administration, 4.8% in the medical and the same in the social reintegration departments. There is no medical staff with over *20 years* seniority; 7.7% of the sample that responds to this criteria is activating as reintegration staff and 23.1% in the administrative field. 69.2% of the employees in my sample are in their last years of activity (with only five years to go until the law offers them the possibility of retirement).

The Results

The working environment

In order to evaluate the environment of prison employees, we have focused on the characteristics of employee relationships (among peers and superior-subordinate ones), the nature of the daily activity, on features of the communication inside the Satu Mare Penitentiary.

So, from a list of features describing particularities of the working environment:

- 66.7% respondents believe it is about *teamwork*,
- 59.1% feel *stress* is a major threat of their job,
- 56.1% employees ticked *responsibility* as a characteristic of the prison work environment,
- 54.5% - *effort*,
- 53% think it is influenced by *bureaucracy*,
- 51.5% of the prison staff in my sample think of *legality*,
- 45.5% say *team-spirit* is a feature of the organizational environment they work in,
- 40.9% professionalism,
- 36.4% say *discipline* is and the same percentage goes to *competence* as characteristic of their job,
- 34.8% respondents ticked *communication*,
- 33.3% feel *tension* as a feature of their job,
- 30.3% - *commitment*,
- 28.8% respect,

- 25.8% chose trust and the same percentage believe *continuous learning*, are also specific to their organizational environment
- 19.7% employees in the test sample feel *rivalry* as specific,
- 16.7% *conflict*,
- 10.6% *tradition*,
- 12.1% believe they are working in an *enjoyable* but also *competitive* one,
- And only 10.6% say *satisfaction* is a treat on the prison work environment.

To summarize the answers to the sample test: the 10 features that fit most the prison work environment of the Satu Mare Penitentiary are: teamwork, stress, responsibility, effort, bureaucracy, legality, team spirit, discipline and competence. At the end of the list, we have a series of words with positive connotation: conflict, tradition, enjoyable and competitive, while *satisfaction* closes the list as the least frequent featured to be ticked by the sample.

When asked to focus on the **work itself,** the respondents chose the following characteristics: 86.4% say their activity is not *easy*, but *tiring* (75.8%), as there are too *many tasks to attend to* (57.6%). 51.5% believe it is not a *routine* work. Prison work is not creative – at least, that is what the responses of 65.2% employees in the test sample think, but it is a *useful* (72.7%) *respected* (42.4%) and competitive (39.4%) one.

Despite the high frequency of the negative treats, only 24.2% of the staff in the sample considered leaving the prison system.

Out of these, a cross-tabulation between the seniority, "it really makes me consider leaving the system" and department variables show that 16.7% of the administration personnel with 5-10 years of experience in the prison work and 50% of the respondents with 10-20 years seniority in the same field are thinking of leaving the prison system behind.

The social reintegration personnel 28.6% with 5-10 years seniority are considering leaving prison work, just like the operational staff with the same seniority. The employees activation in the operational department with 10-20 years of practice want to leave the prison system in 71.1% percentage, while none of the respondents in the same department, with over 20 years of work experience as prison employee want to leave at all.

The **relationship with peers** in general are characterized as follows: committed (75.8% of answers), opportunists (43.9%), sarcastic (30.3%), honest (80.3%), stubborn (48.5%), disinterested (25.8%), malicious (in the opinion of 36.4% respondents), intelligent (77.3%), lazy (24.2% answers) and boring (21.2%).

If we take a closer look to the "malicious" treat, one can see that most of such opinions come from employees in the operational department, and the administrative one.

Yet overall, though there is a correlation between the conflicts in the working environment and the malicious peers, we are talking about a relatively small one (Sig. - 0.175, Pearson coefficient).

Conflict * Malicious Crosstabulation

			Malicious		Total
			Yes	No	
Conflict	Yes	Count	6	5	11
		% within Conflict	54,5%	45,5%	100,0%
		% within Malicious	25,0%	11,9%	16,7%
		% of Total	9,1%	7,6%	16,7%
	No	Count	18	37	55
		% within Conflict	32,7%	67,3%	100,0%
		% within Malicious	75,0%	88,1%	83,3%
		% of Total	27,3%	56,1%	83,3%
Total		Count	24	42	66
		% within Conflict	36,4%	63,6%	100,0%
		% within Malicious	100,0%	100,0%	100,0%
		% of Total	36,4%	63,6%	100,0%

Symmetric Measures

		Value	Asymp. Std. Error[a]	Approx. T[b]	Approx. Sig.
Interval by Interval	Pearson's R	,169	,127	1,372	,175[c]
Ordinal by Ordinal	Spearman Correlation	,169	,127	1,372	,175[c]
N of Valid Cases		66			

a. Not assuming the null hypothesis.
b. Using the asymptotic standard error assuming the null hypothesis.
c. Based on normal approximation.

When the **direct superiors** are concerned, the questionnaire was conceived so that regardless of the level the respondent activates on (junior officers, officers and junior commissioner) his/her answers will represent the person he is directly subordinated to. As such, bosses on all levels of the hierarchy are "evaluated" by their subordinated colleagues.

83.3% of respondents say their boss appreciates the efficiency in the activities their subordinates perform, 53.3% of respondents say their boss *asks for their advice*, that he/she is a *diplomatic* (71.2%) and influent (56.1%) person, who guides them (74.2%) in their day to day activities. 84.8% of the respondents evaluated their direct bosses as being intelligent and "has their back" when needed (81.8%).

74.2% believe their boss is not *hard to please*, nor *discriminating* (72.7%), *authoritarian* (42.4%), *annoying* (86.4%). 28.8% of the prison staff that participated in the survey see their bosses as being *lazy* (28.8%), and stubborn (34.8%). Superficiality is a treat considered appropriate for the bosses of 9.1% of respondents.

Only 18.2% of the sample believes their boss is controlling, and just above 15% feel that their hierarchical superior is not a professional. Rather, he/she has *good organizing skills*, *honest* (both of these features received 74.2% of the total opinions), and *objective* when evaluating their work (69.7%).

Communication in Satu Mare Penitentiary is described as the most important thing in team-work by 97% of the respondents, but is being made difficult by some of the employees' behavior, according to 62.1% of the members of the sample.

66.7% of the employees that participated in the survey say management messages reaches them at the right time, and unaltered.

Though a bit more than 59% of respondents of the prison staff that participated in the survey say that communication takes place mostly from superior to subordinate, 71.9% of them believe that communication works both downward and upward (so inclusively from the subordinates to superiors). They also feel free to speak their mind, knowing that my bosses will try to help me/ find a solution to my problems, though some believe that some tasks are not clearly defined by their superiors (71.2%). There are scarce misinterpretations of the messages employees send to peers and superiors (16.7%).

Conflicts in the Satu Mare Penitentiary

To talk about conflicts, we were first and foremost interested to see who the parties to a conflict within the penitentiary are.

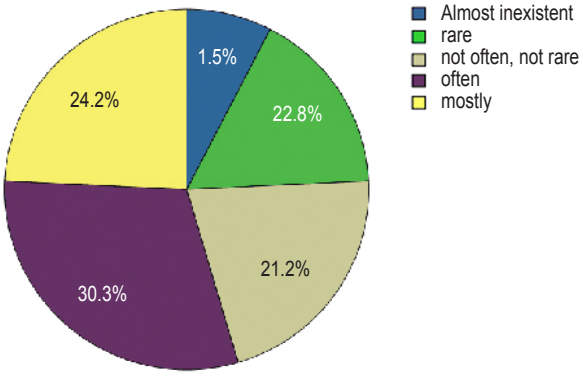
Most prison staff members that participated in the survey appreciated that there are rare conflicts between peers (42.8%), while 25.8% say such disputes are almost inexistent. Only 9.1% associate the personnel-personnel conflicts with the variable "often".

If we consider the frequency of conflicts between subordinates and hierarchical superiors, only 4.5% of the employees answered that these conflicts occur most, while 33.3% say disputes between these parties are not often nor rare. Only 6.1% of the employees believe conflict occurs between subordinates and direct bosses.

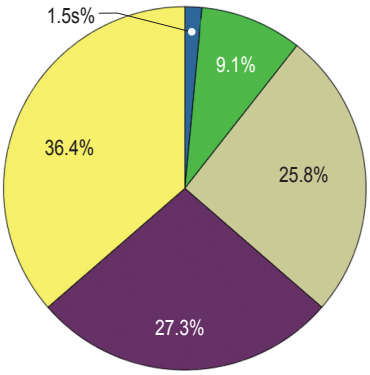
Though there is a believe that conflicts among employees in the police, military and prison environment, usually are generated by financial or other non-financial right being restricted or ill calculated, this survey points towards the fact that in the Satu Mare Penitentiary such disputes are seldom (31.8%), while 27.3% say that employees argue/ find themselves in conflict with the administrative personnel rarely or "not often, not rarely".

As expected, mostly the entities that find themselves in conflict with each other are offenders with prison staff, and offenders among themselves.

Offenders are the most frequent parties in conflicts within the prison environment.



Offenders–personnel conflicts



Offender–offender conflicts

The results of the survey show that 13 of the respondents (19.7%) have been involved in a conflict with a peer in the past three months. If we widen the time frame to one year, 12.1% or respondents admit to being *seldom* involved in a dispute with a colleague, while 1.6% mentions being *seldom* involved in a dispute with one or more of their bosses in the past 12 months.

22 of the prison staff (33%) that answered the questionnaire have witnessed a conflict between peers in the three months prior the survey. If the timeframe is removed, 31% of the respondents say that in some offices/ departments/ work shifts, colleagues dispute constantly.

As mentioned previously, as in any other organization, the penitentiary system also has specific rules for what is and is not allowed as employee behavior. It was already shown that in exceptional cases. As representatives of a public institution – one that has been long organized as a military regime, employees have certain responsibilities even outside of their working hours. Both for situations that harm the public image of the penitentiary and for breaking organization rules, employees may be sanctioned as mentioned in the previous chapter.

97% of the respondents in the survey have not been sanctioned on disciplinary causes generated by a dispute with another prison employee. Yet 22 of the prison staff that participated in the survey have knowledge about employees of the Satu Mare Penitentiary that have been sanctioned as a result of conflicts with other colleagues, while inside the facility.

37.9% respondents found a compromising solution to the conflict they were a part of, 9.1% confess to having stopped talking with the other party to the conflict, 7.6% of the sample test have asked a superior to step in and support the dispute resolution, 1.5% of the conflict referred to by respondents haven't been solved until the time of the present survey.

When the conflicts to which respondents were witnesses to are concerned, 33.3% of them mention how the conflicting parties found a compromising solution to their dispute, 1.5% say the dispute of their colleagues hasn't been solved (so far), 10.6% show that their colleagues stopped talking about the issue at stake and that 3% of the conflicting parties they know of have been sanctioned on disciplinary as a result of the conflict.

There are 7.6% of the respondents that admit to having been involved in litigation with another colleague due to a dispute that occurred at work. Another 36.4% of the prison employees that participated in the survey have knowledge of colleagues that were a part of litigation as a result of conflicts that occurred in the facility.

Causes of conflict

Protecting personal interest at their job, rather the well-being of the team is a major conflict generator in the opinion of 62.1% of the prison staff participating in this survey, while another 71.2% agree to the fact that disputes/ conflicts are generated due to some employees who are not doing their adequately, exceeding or neglect their responsibilities.

A specific personal interest might be the promotion desire. In 34.8% of the cases, prison staff believes that failure to do so become the reason for conflicts to emerge among peers. Employees are not taking responsibility for their mistakes/oversights, which leads to some misunderstandings and conflicts generate conflicts for 66.7% respondents.

The ill equipment of the facility is another reason for some employees to argue (57.6%). The miscalculation of financial revenues is also a conflict generator, as 25.8% of the respondents argue in their questionnaire. The same percentage is shown when other employee rights are ill calculated.

If 33.3% of the respondents agreed with the assertion that "the measures set out by the prison management sometimes reach the respondent late and altered", 36.4% of the prison staff participating in the survey feel that many of the conflicts are generated by employees interpreting messages sent down by hierarchical bosses in different ways.

In an organization, when not only the official communication system but also the grapevine mentioned in previous chapters work efficiently, there is no wonder that 16.7% of respondents feel their colleagues constantly misinterpret their messages and 28.8% believe that tasks are not clearly defined by superiors. 66.7% of the respondents believe that misunderstandings are not causes of conflict, as they do not escalate into conflicts.

When asked to mention other causes of conflict in the Satu Mare Penitentiary, the members of the sample gave multiple answers. Though expressed in different words, the messages were similar. Besides a strong mentioning of employees being stressed,

three out of 66 of the respondents mentioned money and home related problems. Three employees believe lack of the ability of self-control of some colleagues, two mentioned the wish of being noticed by bosses, or to advance professionally without having the needed skills to do so, eight believe divergent opinions and mindsets cause disputes, one mentioned the complicated procedures in some legal aspects, 14 the lack of self-control ability of some colleagues, low education and uncivilized colleagues, employees being stressed and tired, and lack of personnel, three think gossip is a strong motive for dispute, the same respondents mentioning prejudices, and the interest of some colleagues in finding errors in the work of other employees rather that focusing on their own tasks. The large number of detainees and poor working conditions are mentioned by five respondents, and lack of specific abilities for working in the prison environment is considered a cause of dispute by nine of the prison staff involved in the survey.

When choosing a (new) job, each of us is motivated by personal stimuli. Feelings of exciting and enthusiasm about a new job generally characterize an employee in the first two-three years, during which most of the work concerned issues act as validations for these feelings. After this period, people start re-evaluating their job, motivation, priorities, etc. so that they start feeling the need to put some effort into things that previously seemed effortless. The figure bellow supports this information: the longer one works in the prison environment, the more they believe effort is an important issue: 1.5% of the employees with up until 2 years of seniority, 12.1% of those with 5 to 10 years, and 16.7% of those above 10 years.

Teamwork in the prison environment involves more stress and implicitly conflict, in the operational and administrative departments. Teamwork is very important in the operational line and the administrative one, we expect employees in the operational and administrative more stressed than those in the medical and social reintegration ones.

In the same way, conflict and tensions will be indicated as characteristics rather by employees in these two departments.

The survey to shows that most of the staff in the administrative and operational field characterize the relationships between prison employees as stressful, overburdening, tense, though in team work and as involving effort.

If correlating the departments of the respondents to the stress variable, it can be easily seen that in the operational and in the administrative department, stress is indeed specific to the relationship between employees. 61.1% of the respondents in Satu Mare Penitentiary's administrative area and 64.9% of those in the operational field gave this answer.

Within the medical department, 50% of the employees believe stress is characteristic to employee relation, while, in the social reintegration, 71.4% do not use this word to describe the relationship between colleagues.

According to the answers given by the respondents, there is a strong, positive correlation between stress and overburdening especially in the operational and administrative department (0.664 – Pearson coefficient in the operational field and 0.192 in the administrative one).

When correlating the effort each department must cope with, 63.9% of those in the operational field feel stressed, in comparison with 19.4% of those in the administrative, 11.1% in the social reintegration department and 5.6% of those in the medical offices. There is a strong correlation between these two variables (0.415 – Pearson coefficient)

If we calculate the correlation between the overburdening (employees having to do too many tasks at work) and their desire to leave the system, in the below figure, we can clearly notice how, there is a weak correlation between the two variables: Pearson's coefficient 0.97 for the administrative staff, 0.11 for those in the operational department, 0.203 for social reintegration officers and 0.000 for those in the medical field.

When focusing on conflict variables, contrary to hypotheses that the employees at the peak of their activity in the prison feel that prison work is generally characterized by negative words, 83. 3% of the respondents don't think conflict characterizes the relationship between prison employees.

Only 12.1% (7,6% of those with 5-10 years of prison work experience, and 4.5% of those who have been working in the prison environment for 10 to 20 years) believe competition is specific to employee relationship in the prison environment, and only those with 4-20 years of seniority feel competition as relevant to their working relationships. We can assume that psychologically this might also be the case due to the facts that new recruits are still not confident enough to feel able to compete with more experienced colleagues. The same can be said of the personnel with over 20 years of experience on the job, since such employees might become more interested in "not complicating their professional activity, [but] in their remaining years up until retirement".

There is somewhat a tight of a score when bureaucracy is concerned; 53% of all respondents believe bureaucracy is affecting their relationship with colleagues, 33% think of tension as characterizing employee relations, 59.1% respondents mention stress, 71.2% do not think respect is specific to their working relationships with colleagues. This then justifies why only 12.1% believe their daily activity is performed in an enjoyable working environment.

Also, 36.4% of the respondents think they have to perform more tasks due to the incompetence of other colleagues and 60.6% of the prison employees involved in the research is very pleased with their colleagues. Just above 60% of the prison staff that answered the questionnaire are satisfied with the peers in their sector of activity.

The variable of "employees having to cope with too many tasks" is positively correlated with the stress levels they fell. Though the survey has started with the hypotheses that

most of the conflicts in the Satu Mare penitentiary are latent, only 36.4% respondents agree to this assertion. 3% of the respondents have solved the disputes they were a part of due to the order of a hierarchically superior, and 1.5% of them have unsolved issued with at least one colleague.

When the disputes the respondents have knowledge are concerned, in 12.1% of the cases, a superior has been asked to step in and support the reconciliation, 10.6% of the conflicting parties have stopped talking about the issue, 1.5% of the conflicts haven't been solved so far.

Conclusions

According to the April monthly rapport available in the NAP official website, on the 30th of April 2015, in the NAP system there were a total of 29.557 offenders (28.046 males, and 1511 females). The annual rapport on 2014 showed that NAP had 12575 employees nationwide. Inside the NAP system there are two unions activating. Regarding the Satu Mare Penitentiary, the official website of the unit shows that in June 2015, there were over 520 detainees carrying out their sentences and 180 employees.

Between the quality of relationships in the workplace and long-term business effectiveness and success there is a direct ratio, according to Doherty and Guyler (2008, p. 4).

Though is had been largely admitted that the work performed inside the Prison Service, as it is in the Police Service, is most often extremely stressful, Bennet and Crewe believe prison officers find it difficult to admit such situations, or to feeling 'stressed'.

We believe that this survey confirmed this assertion. The two hypotheses that served as starting point for my survey have been partially confirmed. Though conflicts do exist within the Satu Mare Penitentiary, most frequently the parties of such disputes are offenders, and not employees. Though the prison staff does mention work-related stress as being one of the main causes of conflict, this variable is not directly proportional with conflicts. What's more, only 16.7% of the employees that participated in this survey believe *conflict* is characteristic of their working environment, 28.8 believe that conflict is almost inexistent in the peer relationship, while and 42.2% say it is rare for employees to dispute. If we consider the frequency of conflicts between subordinates and hierarchical superiors, 33.3% say disputes between these parties are not often nor rare. Only 6.1% of the employees believe conflict occurs between subordinates and direct bosses.

Among those who admit to having been involved in a dispute, 9.1% confess to have stopped talking with the other party to the conflict, 7.6% of the sample test have asked a boss to step in and support the dispute resolution. 68.2% of the prison staff that participated in the survey think that communication between prison employees overall if efficient, though 40.9% say they seldom have the feeling of not knowing what is hap-

pening in the organization they work in. Only 36.4% participants to the survey agree with the assertion that conflicts in the Satu Mare Penitentiary are mostly latent.

Despite denying the presence of conflict overtly, clues of existing conflicts are indicated in the above chapter. Just like in any organization, in correctional institutions conflict occurs when there is competition (for control over the operating practices or the prison policies). "This may include competition for control if the rules and policies governing staff-inmate relations, or, more subtly, for control of the frame of reference used to define situations. Conflict within large-scale organizations is usually nonviolent and often covert, because membership in an organization restricts the legitimacy of property destruction, interpersonal violence, and over refusal to follow directives. When we speak of conflict in correctional institutions, therefore, we are speaking of felt but not accepted frustration or goal blockages of particular employees or groups of employees created by practices of the other groups within the organization" (Zald, 1962, p. 24). 12.1% of the respondents believed they are working in an overall competitive environment, while 39.4% say their day to day work is competitive.

Though the socio-educational staff is not characterized by "being extremely permissive" or expressing "overt rejection of certain custodial requirements" is not the case in Satu Mare Penitentiary, there is a palpable tension and disagreement coming from the custodial staff towards the "Socio-partying" staff. This term was mentioned in the interview I conducted with one of the custodial staff which refers to staff in the education, psychological and social work department, which concludes opinions of the custodial staff regarding the work and the staff in the other department. Though my survey did not target such conflicts specifically, in some points, such tension also contributes to the tensions and work related stress.

If we reconsider Zald's power balance that we spoke of earlier in this paper, we can observe that in the Satu Mare penitentiary all the preconditions that underlie his model are present: all the personnel in the Satu Mare Penitentiary have a minimal interdependence among themselves and among the (formal or informal) groups they form. If the groups had little intercommunication, the groups' members don't necessarily recognize the conflict even though their groups can be interdependent: the teachers have a more rehabilitative orientation that custodial staff, but teachers are isolated so their feelings of frustration caused by custodial staff are not so visible to others. Also, social workers, teachers and the custodial office employees have conflicting values and objectives, but the organizational adaptation, lead in some cases to the socialization of some of the personnel so that more and more get comfortable to the more dominant perspectives.

So, it is in our opinion that constantly avoiding the other conflicting party, ceasing any dialog regarding the issue is not a solution, *á la tongue*. This is but a postponement of an inevitable over-spelling, or conflict escalation, not to mention the psychological effects of constantly ignoring issues that affect our daily lives.

Since a large number of respondents indicated turning towards a higher hierarchy (a third party) in order to support with (recurrent) problem solving with both peers and superiors, we agree with Weinstein (2001) that the penitentiary as an organization would benefit if a larger group of employees would be submitted to a training session in the philosophy and process of ADR, and the introduction of a work mediation program. This would enable prison staff to cope not just with offender-offender disputes, but also improve their social and communication abilities so that overall, their working environment can shift from a tensioned one, to one where employee conflicting relationships contributes to the work-related stress.

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