

Punishment, Legal Terrorism and Impunity in Africa Reconsidered: Why is Oruka's Account still Relevant to a Modern Day Africa?

Sirkku Hellsten¹

¹University of Helsinki, Finland

skhellsten@live.com

One of the biggest problems and obstacles in the way of working democracy and development as social justice in Africa has been the issue of impunity. Impunity works in different fields of politics and social life and enforces bad governance: it allows corruption, nepotism, cronyism and political as well as ethnic manipulation go unpunished. It allows those in power to be unaccountable to their misconduct, when they rig elections, stuff the ballot boxes, intimidate opposition, and unpleasant criticism. Due to impunity majority of the people go hungry while the political and economic elites loot the public resources for their excessive wealth. Impunity certainly prevents the building of transparent and accountable democratic institutions and the rule of law.

However, impunity cannot be eliminated or prevented by any institutional reform process or mechanism, if we do not have an understanding of the philosophical dimensions of the practice of punishment in Africa. This paper takes discusses the culture of impunity in the light of Odera Oruka's work on Punishment and Terrorism in Africa (2nd edition 1985). The paper takes as its starting point Oruka's argument against the rational and institution of punishment and discusses why the African post-colonial states do not seem to be able to deal with corruption and other cross violations of human rights and dignity by their own leadership which appears too often to be above the law, while ready to punish its subjects, even merely on political reasons. The paper considers Oruka's views on traditional vs. modern penal systems, and shows how the international justice, including ICC, often replaces – rather than complements – the national mechanisms and processes of justice. Oruka's notion that punishment is irrelevant as it can come from wrong actions as well as for the right actions describes well how people in various African states tend have a deep mistrust towards the formal institutions of justice due to their partiality and corrupt nature. In this context the paper will also discuss Oruka's views on state terrorism and revolutionary terrorism in relation to the issues of impunity.