

DoubleVictimisation? Law, Decoloniality and Research Ethics in Post-colonial Africa

by

Tapiwa V. Warikandwa
twarikandwa@unam.na
Faculty of Law, University of Namibia;

Artwell Nhemachena
artwellnhemachena@gmail.com
Faculty of Humanities and Social Sciences, University of Namibia;

Nkosinothando Mpofo
nmpofu@nust.na
Namibian University of Science and Technology

In effectively pacified places, however, European visitors anticipated little difficulty in satisfying their need for local assistants for various types, ranging from local informants and translators to servants, since they could rely on the authority of the colonial regime-threatened or actual-to secure the personnel they required (Kuklick, 2011: 3-5)

Abstract

Surfacing the underside of resilient colonial researches in Africa, this paper develops on scholarly concerns that the word 'research' conjures up dirtiness for Africans consistently subjected to exploitative research since the colonial era. It also argues that researches since colonial times have victimised Africans not only in the physical sense, when they are experimented on, but also in the symbolic sense when their cultures, social institutions and economic institutions have been demonised and destroyed. Arguing for the contextualisation of researches within human rights and socio-legal parameters the paper introduces socio-legal and economic perspectives to research processes. In this paper, experimentation does not only include laboratory experiments; rather experiment is interpreted broadly to include conducting trials of economic, ideological, political, cultural and religious projects on the peoples of the continent. Thus, it argues for the need to ensure that researchers do not only observe ethics but also comply with laws; and not only an ethical, but also a legal dimension to research is proffered.

Introduction: Research, Violence and Victimisation

The history of research since the colonial era shows that researchers have so far been complicit in some violence of colonialism and of the contemporary global coloniality of power. Researches since the colonial era tend to caricature Africans as indistinct from animals and nature (Nhemachena, 2016), and thus legitimise violence that assumes that Africans are dispensable, negligible, sub-human and non-being. Such researches legitimised the colonial violence on the African subjectivities, human dignity and African institutions, which were pulled down and rendered inside out via colonial ideological machinations. Although some researchers' work might have been genuinely aimed at helping Africans, efforts at translating African cultures resulted in the violence of mistranslation (Jeater, 2007). However, as noted by Mitra, (2008) there were also some prominent Western researchers like Bronislaw Malinowski (1967) who stated thus: "As for ethnology, I see the life of the native as utterly devoid of interest or importance, something as remote to me as the life of a dog". In this context, a dog is regarded as a thing and not a legal subject. The 'dog' as a thing is not a bearer of legal entitlements. Researchers can therefore subject a 'dog' to any forms of experimentation without giving due regard to its entitlements.

As Pillay, (2015) and Nhemachena, (2016) note, it was such considerations of colonised people as indistinct from animals that legitimised treating them as animals and objects of resilient colonial [research] experimentations. Thus, African victims of colonial impoverishment and expropriations were further experimented on for instance using Depo-Provera and Norplant contraceptives that were administered only on Black women all throughout the diaspora (Levitt, 2015: 229-30). Depo-Provera which is associated with osteoporosis; loss of sex drive; sterility; an increased risk of breast, cervical and uterine cancer and severe depression, was not approved of in the USA in 1967 but it was nevertheless used on low income Black women [and many of them developed cancer and died] without their knowledge or consent (Levitt, *ibid*). So, colonised Africa has since been used by large pharmaceutical companies and colonial researchers as sites for clinical trials, and these trials were performed without informed consent; some were even forced medical procedures such as injections with smallpox, typhus, tuberculosis and forced sterilisation (The Herald, 22 January 2015; Lusane, 2005). Experiments such as these continue in post-colonial Africa where disinherited and impoverished Africans [including hundreds of hapless young children] are experimented on without informed consent, for purposes of developing drugs such as the transnational Pfizer's Trovafloxacin/Trovan (Onkota, 2014). Thus, Benson, (2013) noted that: "At least 500 children in a small village of Gouro in Chad were held hostage last December by so called "humanitarian" groups who forced them to receive the deadly...[MenAfrivac, meningitis] vaccine, which in many of them caused severe convulsions, paralysis or worse". As recent as August 2016, six Namibian infants died after being injected with "killer-vaccines" (Haidula, 2016).

Surprisingly modern medical researchers insist that vaccination is good for the infants, in particular the poor African infants (Duval *et al*, 2016; Loharikar *et al*, 2016), yet the consequences are dire to the recipients. The experimentation on Africans continues with current genetically modified food experiments that are fed on the poor people even if the Genetically Modified Organisms (GMOS) are proven to be harmful in terms of causing sterility, impotence in men, cancer and other maladies (Nhemachena *et al*, 2016).

Much as Western travellers and researchers such as anthropologists had prior knowledge and were complicit in the Nazi Jewish holocaust, even as they gathered Jewish artefacts and silver to be stored in German museums (Schafft, 2004), colonial researchers and travellers knew about the impending colonisation of the African people whom they researched but they did not inform them beforehand. For this reason, Smith, (2008: 21, 26) argues: "...in each place, after the figures such as Columbus and Cook had long departed, there came a vast array of military personnel, imperial administrators, priests, explorers, missionaries, colonial officials, artists, entrepreneurs and settlers...To consider indigenous people as not fully human, or not human at all enabled 'distance to be maintained and justified various policies of either extermination or domestication...Some indigenous people (deemed not to be human), were hunted and killed like vermin, others (partially human) were rounded-up and put in reserves like creatures to be broken in, branded and put to work".

As Smith, (2008) argues, the colonial researchers took advantage of their power over their victims to redefine colonists' *theft of African artefacts* and lands as merely the "*collection of African artefacts*". Had the victims been asked to define what colonial researchers were doing, they would have certainly defined it as theft rather than mere collection or discoveries. The other challenge is that since the colonists and their researcher-associates were based overseas, there were jurisdictional problems for the disinherited and violated colonial victims. Just as it is today, the funders of researches on Africa are mainly from overseas which is where the researches are conceptualised and African researchers on the continent have come to constitute accomplices in long networks of depredations (Nhemachena, 2016). This extra jurisdictional character of funding and conceptualisation of researches poses challenges in terms of jurisdictional matters where researchers violate subjects that have already suffered centuries of disinheritance and violence on the continent.

In the colonial era, research was conducted with little regard of the poor African who was perceived to be a device fit for experiments. This status quo was compounded by the fact that the existent colonial laws were prejudicial to Africans in general. In this regard, even if the African could raise a legal violation emanating from unethical research practices, there was no legal recourse available. In post-colonial Africa, under the auspices of the so-called human rights dispensation, one would have envisaged a radical paradigm shift in the manner in which research is conducted.

However, evidence as outlined in this paper, suggests that Africans are still subjects of abuse and manipulation in research practices often sponsored by the former colonialist through non-governmental organisations, institutions of higher education and civil society organisations and sometimes their own governments. Most of the prior mentioned institutions prey on the ignorant and impoverished Africans to manipulate them into acceding to participating as subconscious apparatus of dangerous economic, scientific and political (quasi-) experiments.

The upshot of the above is that it would be naive for Africans to expect that extra-jurisdictional entities that fund and control researches on the continent would be constrained by mere ethical considerations. Their extra-jurisdictional nature helps them to evade judicial constraints and accountability for sloppy research practices. If global extra-jurisdictional entities evade the continental and national legal jurisdictions which are ordinarily more forceful than bare ethics, the question is about how and what would motivate such extra-jurisdictional entities to observe ethics, which lack the force of law. Thus, as we will show below, the instance of production by Western intelligence agencies and international NGOs of false statistics about the existence and presence of weapons of mass destruction in Iraq did not result in any prosecutions of those that produced the statistics that provided the contentious and contemptible foundation for the invasive war on and destruction of Iraq.

Much like in colonial research, Africa still suffers the extra-continental organisations and entities that conduct research, no matter how lewd, on a continent whose territorial, ethical and legal accountability they shy away from. Much research on the continent is funded and sponsored by organisations that tower above the continent and that, like gigantic self-appointed executioners, strike away African cultural, social, economic, political and religious desiderata. At the level of logic, the key issue is that, if cultures, societies, economies, polities and religious institutions provide [symbolic and material] protection, why would it not be criminal and unlawful to destroy these institutions that provide [institutional] housing for peoples of the continent? If destroying other people's houses constitutes crimes, why should destruction of Africans' cultures, societies, polities and economies not constitute crimes against such protective institutions? The argument here is that the continued victimisation not only of Africans as a race but also of their institutions that continue to be targeted as [research] problems by Western based and funded researchers (Nhemachena *et al*, 2016), constitutes institutional racism. To continue to vilify and destroy the African institutions is in effect to re-victimise the African victims of colonisation and of colonial disinheritance and destruction.

In the light of the ways in which some researches have been performed very much in the logics of the masquerades since the colonial era, we contend that research has not been much different from headhunting as described by Rosaldo, (1993; 1980). For Rosaldo, (1993: 174), "Illongot men vividly recall the hunger and deprivation they endure over the days and even weeks it takes to move cautiously towards the place where they set up an ambush and await the first person who happens along. Once the raiders kill their victim, they toss away the head rather than keep it as a trophy. In tossing away the head, they claim by analogy, to cast away their life burdens, including the rage in their grief".

Research has historically been practised as a masquerade in that colonists pretended to be genuinely and dispassionately interested in knowing the others when in fact they were primarily interested in colonising and controlling the other. With increasing research, Africa has suffered cultural genocide as well as epistemicide (Nyamnjoh, 2012). Thus, researchers and travellers since the colonial era have endured hunger and deprivations over the days, weeks, months and years it took them to move cautiously towards the continent. On the continent, they set up ‘ambush’ and awaited Africans that happened along not merely in order to kill them but also to destroy and toss away their cultures, episteme and other institutions as precursors and *sine qua non* of colonisation.

Much in the logic of what is called double victimisation or second victimisation, whereby victims that seek justice encounter even more obstacles and must absorb the costs (Doerner *et al*, 2010), Africans are suffering victimisation since often researchers, and their organisations, like detectives have promised what they cannot deliver. Explicating double victimisation, Schulz, (1999) argues thus: “The disregard of the victim’s needs by the providers [of justice] can so closely mimic victim’s experience at the hands of their assailants that secondary victimisation is sometimes called “the second rape”, or “the second assault”. When researchers continue in the contemporary era, to blame victims of colonial exploitation and disinheritance, they in effect victimise those already victimised by colonisation. As the Mail and Guardian, (22 May 2015) notes: “People (claiming to be scientists) say that the reason that poor people are poor is because they are unintelligent, and the reason..... why there are more poor Black people is because (Blacks) have lower IQs.....”

Thus, Africans continue to be victimised even by researchers some of who continue to portray them as natural cohabitants with poverty, degeneracy, suboptimal intelligence and sub-humanism. Therefore, what [research] “help” African victims receive leaves them feeling revictimised (Campbell *et al*, 1999). For a closer look at how double victimisation by researchers happens, we explore more closely ways in which institutions and organisations are complicit in the victimisation of Africans and more generally, people of the Global South.

Violating Contexts and Subjectivities: On the Politics and Economics of Disclosure

A close look at the statistics that provided the West with justification for invading and destroying Iraq clearly shows how research is complicit in global violence, which produces much “collateral” damage on innocent people. Although Powell said to the United Nations Security Council in 2003 that: “What we’re giving you are facts and conclusions based on solid intelligence” (Lewis, 30 June 2014), his claim was faulty. Other writers have in fact provided evidence that Bush was planning to invade Iraq and remove its government well before the terrorist attacks on 11 September 2001 and his idea was to maintain American military pre-eminence consistent with the requirements of a strategy of American global leadership (Global Research, 19 March 2013).

Thus, while prior to the invasion of Iraq, it was asserted that there was solid proof of existence of weapons of mass destruction in Iraq, Iraq actually had no stockpiles of biological, chemical or nuclear weapons before the invasions as the chief weapons inspector subsequently said (BBC News, 7 October 2004).

Although the statistics were used for political reasons to justify invasion of Iraq, some organisations including civil society organisations were complicit. Lewis, (30 June 2013) observes thus: “Some journalists-indeed even some entire new organisations-have since acknowledged that their coverage during those pre-war months was far too deferential and uncritical. These *meaculpas* notwithstanding, much of the wall-to-wall media coverage provided additional, “independent” validation of the Bush administration’s false statements about Iraq”. While it is not clear what motivated researchers to support spurious statistical claims about the existence of weapons of mass destruction in Iraq, other scholars have noted that often researchers are offered bribes or threatened, evidence is stolen, data is withheld or distorted including in the risky matters where human beings can be killed or maimed (Smith, 2005).

The fact that some NGOs are complicit in scandalous researches has been lamented (Global Research, 3 March 2012). It has been argued thus: “While NGOs can have a positive influence on society at large, one must be aware of their background, who is in charge of them, and from whom they are getting funding from because the nature of NGOs is changing, and they are being more and more integrated into the imperial apparatus of domination and exploitation. NGOs are fast becoming the missionaries of empire” (Global Research, 3 March 2012).

Whereas NGOs have names that are disclosed when doing research, to disclose a name is not always enough as aspects like origin, genealogy, parentage are [more] important. In Africa where disclosure involves revealing context, not only one’s name but also one’s totem, parentage (forebears), genealogy, geographical location and even disclosure of one’s children; to privilege anonymity is not necessarily a plus for researchers. In fact namelessness and anonymity imply one is placed in a [colonial] zone of nonbeing where Africans have historically been deprived of their names, cultural, social, religious and spiritual contexts. So, for researchers to replicate colonial deprivations and suspensions of names, context and identities of Africans is to perpetrate violence on the beings of Africans that are rooted in their contexts. To possess identity and a name is to be alive in the world, it is to appreciate the work of those that laboured to find and give a meaningful name: the name is not just a personal name and therefore to suspend it amounts to suspending connections with those that gave that name. Understood in terms of African [Shona] metaphysics, to have a voice but without identity [as is often encouraged for anonymous research participants] is to assume the form of an apparition in one’s community.

Paradoxically, Western epistemologies that claim to champion objectivity also hold that anonymity, secrecy, surreptitiousness and the attendant ability to evade the objectivity of the gaze constitutes intelligence. Thus, there are reports that Western intelligence organisations have hidden behind a web of international companies and NGOs including human rights and pro-democracy foundations across the globe, such that they can act anonymously and invisibly (Global Research, 20 March 2012; Amutabi, 2006).

Still on the issues of disclosure and anonymity, other scholars have implicated some academies, which they accuse of doing secret research work for globalised secret intelligence agencies (Mills, 1991). Although the secret agencies are noted as having overtly and covertly established entire university institutes and research departments in some parts of the world, it is also noted that some research assistants or students are involved in their professors' researches without knowledge of presence of secret intelligence funding (Mills, 1991: 33). Because the secret agencies have established centres such as African studies Programs; Centre for Middle East Affairs; Centres for International Studies; Asian Foundations, whose professors they pay handsomely (Mills, 1991: 31, 32), it is often hard to distinguish between the Agency and the universities. Mills, (1991: 20) observes thus: "Most programs are conducted in secrecy. Sometimes even the university administration is unaware of... funding or recruiting due to many disguises the Agency may use; front companies, state departments or defence department research, even purported independent academic institutions".

Mills, (1991) therefore paints a picture of research as sometimes constituting a mafia [for purposes of global hegemony] characterised not only by secrecy and dark shadows but also by research constitutive of networks of mafia, extracting and externalising local indigenous knowledge that is first packaged as raw data much in the form of raw materials. So, the challenge for Africa is that in contexts where researchers move and live with the shadows of secrecy of globalised agencies, disclosure of identities does not go beyond merely uttering names. For researchers that unwittingly participate in such, often lucratively funded and controlled projects disclosure of their identities does not suffice to guarantee security of participants in research. Thus, ethics committees' requirement for researchers to disclose their identities and researches erroneously presupposes that funding organisations and their networks are in the first instance prone to full disclosure, transparency and accountability. Since the corollary of disclosure is willingness to be accountable and responsible, it would be naïve to assume that meaningful disclosure is costless.

Ethics v Compliance

The debate regarding ethics and compliance is a fundamental issue in so far as research is concerned (Wassenaar, 2006: 60). There is a significant difference between ethics and compliance in research. The concepts are frequently wrongly applied interchangeably. Such an approach significantly diminishes the degree of the differences between the two aforementioned concepts. In principle, the choices that researchers make in the implementation and construction of ethics and compliance in the African context often characterise their research practices. In the next sections of this paper, we will point out the fundamental differences between ethics and compliance which researchers have often ignored when conducting research in an African setting.

Ethics

Ethics has often been regarded in the contemporary global era as the foundation upon which research should be conducted. Ethics dictate that any form of research should abide by the following principles namely: 1) autonomy; 2) non-maleficence; and 3) beneficence (Durrheim & Wassenaar, 2002: 66). The concept of autonomy demands that the researcher respects the research participant's human dignity (Kohi *et al*, 2006). The net implication of this construction is that research participants' consent must be sought before any research is conducted. However, it is trite to point out that researchers have often claimed that consent has been obtained from research participants yet such a development is not expressly stated (Wassenaar, 2006: 66). Instead, it is assumed that such researchers have obtained the necessary consent from research participants. In the African context, doubt is thus cast as to whether the autonomy of the participants is respected in instances where consent is not expressly stated. This serves as reason why we argue in this paper that most research undertaken in Africa translates to double victimisation of victims as opposed to respecting their autonomy.

The absence of express consent on the part of the research participants presupposes such persons' implied acceptance to harm. Can one voluntarily consent to an impairment of their human dignity in research under normal circumstances? A reasonable man is unlikely to subject oneself to harm without undue pressure being exerted upon such individual or material disclosure of pertinent information being unduly withheld in order to manipulate the research participant into participating in the research contrary to such party's best interests. Regrettably, double victimisation thrives in Africa as research participants hold out hope that the researchers legitimately seek to assist them. Unbeknown to the unsuspecting victims, the researchers are not concerned about the victims' plight but the former's selfish desires and the economic interests of their sponsors.

So often, emphasis is placed on the ulterior motives of the researchers and economic gains from the outcomes of the ill-gotten research data. In principle, double victimisation in Africa takes place due to the fact that researchers do not consider research participants as bearers of rights but rather objects or tools of research which are used like guinea pigs in a research laboratory. Research participants often are rewarded by little payments in the form of money or food items at the expense of their legal entitlements.

Apart from autonomy, research ethics demands that the researcher should do no harm to the participant (non-maleficence). Emphasis in this regard is placed on the need to avoid making public personal information of the participants (Bertram & Christiansen, 66). Nevertheless, little or no regard is placed on the effects of the act of acquiring information from victims and the wounds it opens on the healing participants. Even if the information obtained is not made public, it would have subjected the research participant to double victimisation. It has to be objectively accepted that interviewing victims double victimises them directly or indirectly. Ethical principles have failed to address this worrisome issue in the African context. It is thus plausible to propose that any such research that has the potential to or negatively impacts on participants should not be made public let alone be approved (Moore, Brookes and Cotner, 2011).

Beneficence is another key principle of research ethics. Research should benefit directly or indirectly participants and not subject such individuals to worse-off conditions than they were in before the research was conducted (Bertram & Christian, 67). The general assumption in research ethics is that researchers would hardly undertake research if it does not translate to positive gains and transformation for the participants (Ibid, 67). In practice, this has proven to be a utopian ideal for Africa. The irrefutable truth is that the ill-gotten gains from researches that double victimise participants accrue to the researcher and such party's foreign-based sponsors. This thus indicates that benefits of research are less obvious for the victims or non-existent (Ibid: 67), especially in the African context. As already stated, participants are mere 'guinea pigs' to satisfy the unsympathetic reflexive desires of researchers driven by a neo-liberalist agenda. Neo-liberalism gives little regard to human rights and pursues a capitalist agenda which cares little about human welfare but prioritises profiteering (Warikandwa & Osode, 2014).

It is often suggested that researchers have a professional obligation to obtain the truth whilst giving due regard to guiding principles of objectivity and integrity (Brynard *et al.*, 2016: 95). This approach assumes that researchers do not have their biases in research and thus presupposes the existence of a moral contract that on the face of it is not negotiable with regards to protecting the best interests of the participants. Emphasis is placed on the process of acquiring information and how it has to be handled. The negative impact of such research on the participants is often negated. The biases of the researcher and his/her sponsors take precedence over the best interests of the participants. Research results are thus manipulated to suit the "superior context" from which the researcher and funders originate. It is thus questioned what the relevance of ethics is to victims of double victimisation in research conducted in Africa. Clearly the answer is none.

Compliance

Compliance as a concept emanates from a need to observe the law as opposed to ethics which focuses on conforming to what is deemed appropriate in a particular field regardless of what the law provides for (Watson, 2014). Compliance therefore emanates from a statutorily imposed obligation by the State whereas ethics constitutes principles or guidelines one opts to take into consideration when undertaking a particular activity such as research (Ibid, 2014). For example, countries have food laws that require the labelling of food products in a specified manner. Such food laws will include rules that have to be observed in the labelling process. Failure to adhere to the set rules or technical regulation does not constitute an unethical or immoral conduct. Instead, it amounts to non-compliance with the set legal rules with the wrongdoer being liable to paying a fine, or being subjected to relevant State sanctions as prescribed at law. Further to criminal liability, civil liability could also be preferred in instances where delictual liability can be established.

When emphasis is placed on embracing advanced values of right and wrong, the net result is not pushing for compliance but ethical considerations (Ibid, 2014). Such an approach places significance on a value-based culture which makes individuals proud of their conduct. It is in this regard that the difference between ethics and compliance becomes intriguing especially when one has to deal with a matter related to an issue of compliance that consists of an ethical consideration. An example is that of corruption. Corruption is as a rule prohibited in terms of the relevant laws or enabling legal instruments such as statutory instruments. It is generally submitted that corruption is *contra bonos mores* (contrary to the legal convictions of society) and constitutes an ethical component (Neethling, *et al.*, 2015). However, using ethical considerations to address the scourge of corruption may not be the ideal approach to adopt. Strict regulation would be plausible.

Taken into the context of research in Africa, adopting research policies which encourage researchers not to violate the participants' rights and best interests may be deemed as plausible. The research policy is a fundamental component of research ethics as are messages of rights and wrongs, values and morality in research. It has been assumed that the aforementioned elements prompt researchers to follow research ethics. However, in practice, such assumptions lack credibility amongst researchers who consider the protection of the best interests of research participants from Africa as not being worthy of protection. In essence, it in fact feels wrong for researchers from developed countries and their likeminded peers from Africa to desist from violating the rights of participants as part of their research routine. These researchers justify their actions as a right as they presuppose that the ends justify the means. Their unstated view is often that it is better for them to pursue their personal interests and/or biases and the research agendas of their sponsors as opposed to the best interests of the poor African research participants. The poor African research participants lack the financial means to institute law suits against the financially sound researchers and their multinational sponsors in cases where their rights are violated.

Without laws which stress the potential liability, impact and risks of non-compliance and make it mandatory for researchers to observe the need to protect the rights of participants in the process of conducting research, research participants will remain victims of double victimisation in research. As such, research that complies with the law and places emphasis on research ethics should be adopted. Such an approach could alleviate the plight of African research participants.

Human Rights Violations in Research

Double victimisation in research should be regarded as one form of violating a research participant's human rights, specifically the right to human dignity. People should not be treated unfairly and unjustly (actual or presumed) in the pursuit of research interests. Any attempts to undermine one's human dignity should be proscribed by existing human rights standards. It is in this regard that the Universal Declaration of Human Rights (UDHR) adopted in 1948 becomes paramount. The UDHR provides for a set of human rights that are universally guaranteed. Such rights focus on human dignity and are non-derogable. It is in this context that a balancing of interests must be pursued between ethical considerations and the need to recognise a fundamental right, in this case, the right to human dignity.

A cursory analysis of the right to human dignity will indicate that it is a standalone personality right within the scope of the concept of *dignitas* (Neethling, *et al.*, 2005: 191ff; Van der Walt and Midgely, 2005: 113-114). Neethling *et al.* (Neethling, *et al.*, 2015: 369) point out that: "A person's dignity embraces his subjective feelings of dignity or self-respect". Violation of one's dignity therefore constitutes an act of insulting such individual. There are many ways in which a person can be insulted (Neethling, Potgeiter and Visser, 192-193), of which the publication of research findings regarding a victim is a classic example. The publication of insulting words in whatever form (*Minister of Police v Mbilini* 1983 3 SA 705 (A) 715-716) or any conduct that demeans or is contemptuous of another person constitutes an infringement of one's dignity (*Dendy v University of the Witwatersrand, Johannesburg* 2005 5 SA 357 (W)). For purposes of ethical considerations in research, it is important to note that the publishing of insulting material to a third party is not a prerequisite for the infringement of one's dignity to be established (*Le Roux v Dey* 2011 3 SA 274 (CC) 319). Publication to the aggrieved party (victim) only is sufficient to satisfy the infringement of one's dignity (*Whittington v Bowels* 1934 EDL 142). To be regarded as an infringement of the right to dignity, a person's conduct must not merely constitute the infringement of the subjective feelings of a legal object but it must also be *contra bonos mores* (Neethling, *et al.*, 194-195). In the case of *Delange v Costa* (1989 2 SA 857 (A) 862) Smallberger JA stated that:

“Because proof that the subjective feelings of an individual have been wounded, and his dignitas thereby impaired, is necessary before an action for *injuria* can succeed, the concept of *dignitas* is a subjective one. But before that stage is reached, it is necessary to establish that there was a wrongful act ... In determining whether or not the act complained of is wrongful the Court applies the criterion of reasonableness ... This is an objective test. It requires the conduct complained of to be tested against the prevailing norms of society (i.e. the current values and thinking of the community) in order to determine whether such conduct can be classified as wrongful.”

The construction of a reasonable man in the contemporary African society is problematic. African societies' value systems have been supplanted by the alien colonially induced moral norms which mirror the new world order construction. Such Western systems place little significance on human welfare as compared to the Ubuntu value system which places people first over any other peripheral interests such as research (Lutz, 2009; Metz, 2007b; Mbigi 2005b; Mbiti, 1969). For justice to be realised for the victims of double victimisation, reasonableness should not be measured merely on the basis of the “current values and thinking of the community” but on the accepted traditional norms of the African societies in their original sense (Metz, 2007a; Sithole, 2001; Nyasani, 1989). This is simply because the current values often represent a distortion of the African value systems which traditionally would not have sanctioned experimentation on human beings in a harmful manner (Van Niekerk, 2007). Capitalist centred contemporary value systems which have been imposed in many African countries place little regard on human rights and cannot be regarded as the benchmark for reasonableness (Murove, 2008).

The distorted notions of reasonableness in the African context thus raise questions as to the concept of human dignity emanating from the human rights construction useful in addressing the violation of the rights of research victims. It is important to bear in mind that the construction of human dignity in the UDHR does not *per se* address matters related to research (Macklin R., 2003: 1420). This implies that reference to human dignity might just be a case of vague restatements or mere slogans that cannot change the plight of victims of double victimisation in research (Ibid: 1420). The value systems have been set to suit the best interests of the foreign researchers and their sponsors. As such it is plausible to submit to Macklin's view to the effect that: “... the construction of human dignity carries no meaning beyond what is implied by the principle of research ethics which advocates for the respect of persons”. The use of the construction human dignity in social contexts with conflicting value systems twists its meaning and renders it completely distorted to be of much use to victims of double victimisation in Africa. It may then have to be asked as to why human dignity has to be relied upon to try and curb incidents of double victimisation in research as if it means something over and above respect of persons or for their autonomy? Perhaps the answer lies in the simple realisation that research ethics has failed to protect victims of double victimisation in research.

Conclusion

The manner in which research has been conducted in post-colonial Africa needs a significant overhaul. Research ethics have failed to prevent double victimisation of victims in research conducted in Africa. We are of the view that there is need to review the concept of ethics based research and substitute it with legally binding rules which require compliance with research principles as opposed to the optional role of ethics (see for instance Mezinska *et al.*, 2016). Such an approach, in our view, may eventually contribute to improved research practices in Africa which do not exacerbate the suffering of the poor Africans but goes a long way to address their legitimate concerns. In this regard, research will translate into a viable component of promoting growth and development in Africa as opposed to enlarging the space of neo-liberal economic policies which diminish real developmental prospects in the continent. As it stands, most research activities in Africa are mere window dressing stunts with little or no benefits for the research participants, yet the researchers and their sponsors continue to realise economic windfalls. The participants are left nursing wounds of double victimisation and dreaming of solutions to identified problems which the researchers promised but never delivered.

References

- Amutabi M N., 2006, *The NGO Factor in Africa: The Case of Arrested Development in Kenya*. Routledge: New York
- BBC News., 7 October 2004, Report Concludes no WMD in Iraq News. Bbc.co.uk/2/hi/middle_east/3718150
- Berkowitz L., 1989, Frustration-Aggression Hypothesis: Examination and Reformulation, in *Psychological Bulletin* vol 106, (1): 59-73
- Bertram C., and Christiansen I., 2015, *Understanding Research: An Introduction to Reading Research*. Van Schaik Publishers: Pretoria.
- Brynard D.J., *et al.*, 2014, *Introduction to Research* 3rd edition. Van Schaik Publishers: Pretoria.
- Campbell R *et al.*, 1999, Secondary Victimisation of Rape Victims: Insights from Mental Health Professionals who Treat Survivors of Violence, in *Violence VCT*. Fall 14 (3): 261-275
Dendy v University of the Witwatersrand, Johannesburg 2005 5 SA 357 (W).
- Doerner W M *et al.*, 2010, Double Victimisation, in Fisher B S *et al.*, eds, *Encyclopaedia of Victimology and Crime Prevention*. Doi: <http://dx.doi.org/10.4135/9781412979993>

Durrheim, K. and Wassenaar, D., 2002, Putting Design into Practice: Writing and Evaluating Research Proposals, in Terre Blanche, M., and Durrheim, K., eds, *Research in Practice: Applied Methods for the Social Sciences*, 2nd edition, University of Cape Town Press: Cape Town.

Duval L. *et al.*, 2016, The Roma Vaccination Gap: Evidence from Twelve Countries in Central and South-East Europe, in *Vaccine* vol 34: 5524-5530.

Global Research., 12 March 2013, Scientific Assassinations” Are Part of the CIA’s Modus Operandi. www.globalresearch.ca/scientific-assassinations-are-part-of-the-cia-modus-operandi/5326396

Global Research., 17 March 2013, Iraq: A War of Aggression: No WMD, No Connection to Al Qaeda. www.globalresearch.ca/Iraq-a-war-of-aggression-no-wmds-no-connection-to-al-qaeda/5327548

Global Research., 20 March 2012, Middle East: The CIA Operating Behind a Web of “Pro-Democracy” NGOs. www.globalresearch.ca/middle-east-the-cia-operating-behind-a-web-of-pro-democracy-ngos/29864

Global Research., 3 March 2012, NGOs-Agents of Empire. Africanagenda.net/ngos-agents-of-empire/

Haidula T., 2016, Parents sue over vaccine deaths. *The Namibian* 15 August 2016.

Huesmann L R et al., 2006, The Role of Media Violence in Violent Behaviour, in *Annu. Rev Public Health* 27: 1, 1: 1-23

Jeater D., 2007, *Law, Language, and Science: The Invention of the Native Mind in Southern Rhodesia*. Heinemann: Portsmouth

Kohi, T. W., 2006, HIV and AIDS Stigma Violates Human Rights in Five African Countries, in *Nursing Ethics* vol 13(4): 404 – 415.

Kuklick H., 2011, Personal Equations Reflections on the History of Fieldwork with Special Reference to Socio-Cultural Anthropology, in *ISIS*, vol 102, Number 1: 1-33

Le Roux v Dey 2011 3 SA 274 (CC) 319.

Levitt J I., 2015, *Black Women and International Law: Deliberate Interactions, Movements and Actions*. Cambridge University Press: New York

Lewis C., 30 June 2014, The Centre for Public Integrity: False Pretences. <http://www.publicintegrity.org/2008/01/23/5641/false-pretences>

Loharikar A., Dumolard L., Chu S., Hyde T., Goodman T. and Mantel C., 2016, Status of New Vaccine Introduction – Worldwide, September 2016. *Morbidity and Mortality Weekly Report* vol 65(41): 1136-1140.

Loubser M., *et al.*, 2012, *The Law of Delict in South Africa*. Oxford University Press; Cape Town.

Lusane C., 2005, *Hitler's Black Victims: The Historical Experiences of European Blacks, Africans, and African Americans in the Nazi Era*. Routledge: New York and London

Lutz D.W., 2009, African Ubuntu Philosophy and Global Management. *Journal of Business Ethics*, vol 84: 313.

Macklin R., 2003, Dignity is a Useless Concept: It means no more than Respect of Persons or their Autonomy, in *BMJ* vol 327: 1419-20.

Mail and Guardian., 22 May 2015, Race “Science’ Resurfaces but not all is Black and White.

Mbigi, L. (with J. Maree)., 2005b, *Ubuntu: The Spirit of African Transformation Management* Knowres: Randburg, South Africa.

Mbiti, J. S., 1969, *African Religions and Philosophy* East African Educational Publishers: Nairobi.

Metz, T., 2007a, Towards an African Moral Theory, *The Journal of Political Philosophy* vol 15(3): 321-341.

Metz, T., 2007b, Ubuntu as a Moral Theory: Reply to Four Critics, *South African Journal of Philosophy* vol 26(4): 369-387.

Mezinska S. *et al.*, 2016, Research in disaster settings: A systematic qualitative Review of Ethical Guidelines. *BMC Medical Ethics* 17:62. DOI 10.1186/s12910-016-0148-7.

Miller N *et al.*, 2003, A Theoretical Model of Triggered Displaced Aggression, in *Personality and Social Psychology Review*, vol 17, No 1: 75-97

Mills A C., 1991, *CIA Off Campus: Building the Movement Against Agency Recruitment and Research* 2nd Edition. South End Press: Boston

Minister of Police v Mbilini 1983 3 SA 705 (A) 715-716.

Moore R., *et al.*, 2011, The Relation of High School Biology Courses and Students' Religious Beliefs to College Students' Knowledge of Evolution. *The American Biology Teacher*, vol 73(4): 222-226.

Murove, M. F., 2008, On African Ethics and the Appropriation of Western Capitalism: Cultural and Moral Constraints to the Evolution of Capitalism in Post-Colonial Africa, in R. Nicolson. ed, *Persons in Community: African Ethics in a Global Culture* University of KwaZulu-Natal Press: Scottsville, South Africa, pp. 85-110.

Neethling J., *et al*, 2005, *Neethling's Law of Personality*. LexisNexis: Durban.

Neethling J., *et al.*, 2015, *Law of Delict* 7th edition. LexisNexis: Durban.

Nhemachena A *et al.*, 2016, The Notion of the Field and the Practices of Researching and Writing Africa: Towards Decolonial Praxis, in *Africology: The Journal of Pan African Studies* vol 9, No 7: 15-36

Nhemachena A., 2016, Animism, Coloniality and Humanism: Reversing the Empire's Framing of Africa, in Mawere M *et al*, eds, *Theory, Knowledge, development and Politics: What Role for the Academy in the Sustainability of Africa?* Bamenda: Langaa Research and Publishing Common Initiative Group: 13-54

Nyamnjoh F B., 2012, Potted Plants in Greenhouses: A Critical Reflection on the Resilience of Colonial Education in Africa, in *Journal of Asian and African Studies*, 47, 2: 129-154

Nyasani, J. M., 1989, The Ontological Significance of 'I' and 'We' in African Philosophy, in Heinz Kimmerle (ed.), *I, We and Body: First Joint Symposium of Philosophers from Africa and from the Netherlands* B. R. Grüner: Amsterdam: 9-16.

Okonta P I., 2014, Ethics of Clinical Trials in Nigeria, in *Niger Med J* 55 (3): 188-194

Patterson D., 2010, The Linkage Between Secondary Victimization by Law Enforcement and Rape Case Outcomes, in *Journal of Interpersonal Violence J. Interpers Violence*. Doi: 10.1177/0886260510362889

Rigby P., 1996, *African Images: Racism and the End of Anthropology*. Bloomsbury Academic

Rosaldo R., 1980, *Ilongot Headhunting 1883-1974: A Study in Society and History*. Stanford University Press: Stanford, California

- Rosaldo R., 1993, *Culture and Truth: The Remaking of Social Analysis*. Beacon Press: London
- Schaft G E., 2004, *From Racism to Genocide: Anthropology in the Third Reich*. University of Illinois Press: Urbana and Chicago
- Schulz P., 1999, Secondary Victimization of Rape Victims: Insights from Mental Health Professionals who Treat Survivors of Violence, in *Violence and Victims*, V. 14 (3)
- Sithole, J.: 2001, 'Africa Can Only Use Own Culture to Influence Globalization', *African Online Services News*, <http://www.globalpolicy.org/globaliz/cultural/2001/0515afr.htm>. Accessed 24 October 2016.
- Smith J M., 2005, *Seeds of Deception: Exposing Industry and Government Lies about the Safety of the Genetically Engineered Foods You're Eating*. Chelsea Green Publishing Company
- Smith L T., 2008, *Decolonising Methodologies: Research and Indigenous Peoples*. Zed Books: London and New York
- The Herald., 22 January 2015, West's Experimentation Terrorism Against Africa. www.herald.co.zw/West-experimentation-terrorism-against-africa/
- Tilley H., 2011, *Africa as a Living Laboratory: Empire, Development, and the Problem of Scientific Knowledge, 1870-1950*. University of Chicago Press: Chicago and London
- United Nations General Assembly. (1948). *Universal Declaration of Human Rights* (217 [III] A). Paris.
- Van der Walt J.C. and Midgely J.R., *Principles of Delict*. LexisNexis: Durban.
- Van Niekerk, J., 2007, In Defence of an Autocentric Account of Ubuntu, *South African Journal of Philosophy* vol 26(4): 364-368.
- Warikandwa T.V. and Osode, P.C., 2014, Legal Theoretical Perspectives and their Potential Ramifications for Proposals to Incorporate a Trade-labour Linkage Clause into the World Trade Organisation's Legal Framework. *Speculum Juris* vol. 28(2): 41-69.
- Wassenaar D., 2006, Ethical Issues in Social Science Research, in Terre Blanche M., Durrheim K. and Painter D., *Research in Practice: Applied Methods for the Social Sciences*. University of Cape Town Press: Rondebosch, Cape Town.

Watson A., 2014, Ethics vs. Compliance: Do we really need to talk about both? Available at <http://www.insidecounsel.com/2014/01/27/ethics-vs-compliance-do-we-really-need-to-talk-about-both/> Accessed 24 October 2016.

Whittington v Bowels 1934 EDL 142.