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Comparison of the Western and Traditional African Methods of Conflict Resolution on the Example of International Criminal Tribunal of Rwanda (ICTR) and *Gacaca* Method in the Context of the 1994 Rwanda Genocide

Porównanie zachodnich i tradycyjnych afrykańskich metod rozwiązywania konfliktów na przykładzie Międzynarodowego Trybunału Karnego dla Rwandy (ICTR) i metody *Gacaca* w kontekście ludobójstwa w Rwandzie w 1994 r.

• Abstract •

Local traditions of conflict resolution have been overlooked since the dominant methods of dealing with these issues are often centered on Western approaches to conflict resolution. This highlights the urgent need to prioritize engagement with indigenous knowledge and processes, particularly in conflict resolution and broadening our perspectives. While conflicts continue to rise in Africa(post-independence), we need to revisit the conflict resolution approaches that incorporate local traditions embedded in various African communities. The article highlights African approaches towards conflict resolution in Sub-Saharan Africa, e.g., such methods as *Gacaca*, in comparison with the Western concepts of conflict resolution. The author's extensive experience and fascination with African traditions also makes it possible to introduce readers to various issues of

• Abstrakt •

Lokalne tradycje rozwiązywania konfliktów w Afryce zostały w pewien sposób zaniedbane, ponieważ dominujące sposoby radzenia sobie z sytuacjami konfliktowymi są zazwyczaj skoncentrowane na optyce zachodniej. Istnieje więc wyraźna potrzeba, aby rozszerzyć katalog sposobów rozwiązywania konfliktów poprzez inkluzję lokalnych procesów i źródeł wiedzy. W sytuacji wciąż wybuchających konfliktów w Afryce należy zrewidować podejście do ich rozwiązywania, tak by uwzględniało ono tradycje zakorzenione w różnych społecznościach afrykańskich. Artykuł podkreśla znaczenie lokalnych metod rozwiązywania konfliktów funkcjonujących w Afryce Subsaharyjskiej, takich jak metoda *Gacaca*, i porównuje je z rozwiązaniami opartymi na wzorcach zachodnich. Autor wykorzystuje swoje bogate doświadczenie i zainteresowania badawcze

peace studies of African origins. The qualitative methods with a reliance on various reports from Western and African peace and security experts as well as subject literature discourses on African indigenous conflict resolution methods have been used for the purposes of the article. The author's analysis is also based on the interviews. Interviews were conducted to evaluate *Gacaca* courts and the procedures which included confessions, punishment or forgiveness then followed by reconciliation and integration into the society. The interviews included the victims of the genocide, a retired journalist, a former member of the Rwandan government, and a former employee of a non-governmental organization.

Keywords: conflicts; *Gacaca* courts; International Criminal Tribunal for Rwanda (ICTR); Western methods of conflict resolution; African traditional methods of conflict resolution

związane z tradycjami afrykańskimi, aby zapoznać czytelników z wybranymi koncepcjami studiów nad pokojem, które mają korzenie afrykańskie. Na potrzeby artykułu zastosowano metody jakościowe, oparte na analizie raportów i opracowań zachodnich i afrykańskich ekspertów ds. pokoju i bezpieczeństwa, jak również na analizie dyskursu obecnego w literaturze przedmiotu, dotyczącego afrykańskich sposobów rozwiązywania konfliktów. Obok analizy literatury wykorzystano także metodę wywiadów. Zostały one przeprowadzone w celu oceny postępowań sądowych i procedur *Gacaca*. Wywiady przeprowadzono z ofiarami ludobójstwa, emerytowanym dziennikarzem, byłym członkiem rządu rwandyjskiego oraz byłym pracownikiem organizacji pozarządowej.

Słowa kluczowe: konflikty; *Gacaca*; Międzynarodowy Trybunał Karny dla Rwandy (ICTR); zachodnie metody rozstrzygania konfliktów; afrykańskie tradycyjne metody rozstrzygania konfliktów

Introduction

The aim of the article is to investigate and compare the African and Western methods of conflict resolution, as well as their significance. It is essential to acknowledge that the marginalization of indigenous approaches to conflict resolution can be attributed to colonialism's ethnocentric biases. The colonialist bias frequently perceived African indigenous communities as missing structures that were considered essential for a civilized existence. Because there was no central organization to coordinate and enforce social behavior, early European observers came to the conclusion that indigenous peoples were in constant turmoil. As a result, colonial conquerors failed to acknowledge or value non-European institutions and systems for resolving conflicts.

Overall, the central argument of the article is to re-think the resolution of African conflicts by incorporating local traditions embedded in various African societies. Anthropological and other studies have demonstrated that indigenous cultures can stick together and manage conflicts for extremely extended periods of time. Various publications and research have emphasized the African traditional methods when it comes to curbing conflicts occurring in the African sphere. This implies traditional African methods that are linked to the cultural aspect and context, facilitate the

creation of interaction and unity among the warring or antagonistic parties or the respective indigenous tribes or parties. They also bring the sense of belonging among people. Another option would be applying the traditional methods, but in parallel with the Western methods, to resolve conflicts – otherwise Africa will continue to be mired in internal conflicts. At the same time, it does not mean the complete abandonment of the Western methods. Makumi Mwagiru has underscored the importance of conflict resolution: "One of the distinguishing features of Africa's political landscape are its many dysfunctional and protracted social and political conflicts. This problem is made worse by lack of effective mechanisms to manage these conflicts. Where they exist, they are weak and, thus, social and political relationships in the continent have been disrupted. This has had negative consequences, including the interruption of the development and the diversion of scarce resources to the management of these conflicts" (Mwagiru, 2001, p. v).

The subject literature includes both Euro-centric and Afro-centric views on conflicts, peace, justice, and reconciliation, such as Mwagiru and Brock-Utne. Also, different reports from the United Nations and African Union bodies are referenced. The article comprises of six parts that include the following: Post-colonialism and its legacy, the Rwanda Genocide, the International Criminal Tribunal for Rwanda (ICTR), *Gacaca* method, evaluation of the effectiveness of ICTR (desk research) and *Gacaca* method (field research), and lastly, the conclusion that focuses on general remarks concerning the subject and recommendations by the author.

The analysis is based on primary and secondary sources. The first was generated through interviews related to the *Gacaca* method (African traditional method), and the second includes desk research on the International Criminal Tribunal for Rwanda (Western method). In the analytical process, both methods were compared, which helped the author answer the following questions: 1. Are African methods of conflict resolution and peace-building more effective for the African scenario than the Western ones?; 2. Could the Rwanda Genocide of 1994 be considered a handbook case of why the United Nations (UN) is not effective, especially when it comes to cases outside of the Western orbit?

In the present-day Africa, conflict resolution and peace-building has become a necessary prerequisite towards the building of a stable and sustainable continent especially after the post-cold war where there was a drastic rise in the internal conflicts. The qualitative methods with a reliance on various reports from Western and African peace and security experts as well as subject literature discourses on African indigenous conflict resolution, have been used for the purpose of the article.

Post-colonialism and its legacy

Understanding the lasting impact of colonialism on cultural, political, and economic aspects is of utmost importance. In the post-colonial era, there has been a discourse about disregarding local traditions of conflict resolution, which are often overshadowed by Western methods. It is crucial to broaden our perspectives by actively engaging with indigenous processes, particularly in the context of present-day conflict resolution and peace-building initiatives. The ethnocentric conceits of colonialism are mainly to blame for the disregard of local approaches to conflict resolution, which viewed indigenous societies as lacking crucial institutions for a civilized existence. This perspective not only legitimized colonial invasion but also prevented colonizers from recognizing alternative methods of organizing political life and resolving interpersonal conflicts (Brigg & Bleiker, 2011). The dominance of Western perspectives and rationalism in conflict resolution can only be understood by acknowledging that the dismissal of non-Western knowledge is associated with more than just Western power, as evident in aspects such as economic wealth, military strength, and academic institutions. The solution is to actively recognize and incorporate local conflict resolution methodologies and understandings.

The Rwanda Genocide of 1994

The Rwandan Genocide is considered one of the most prominent ultramodern genocides to have occurred along the African route. The genocide lasted for about 100 days between April and July 1994. An estimated one million ethnical Tutsi and moderate Hutu were killed as the international community and the United Nations Assistance Mission for Rwanda (UNAMIR) stood by. The 1994 acts of violence are regarded as one of the worst moral atrocities, and the failure of the international community to intervene and stop it leaves a stain on the reputation of the United Nations peacekeeping forces in the present day.

International Criminal Tribunal for Rwanda (ICTR)

The International Criminal Tribunal for Rwanda was established by the United Nations Security Council to prosecute individuals responsible for serious violations of international humanitarian law and genocide committed in Rwanda and neighboring states between January 1, 1994, and December 31, 1994 (United

Nations International Residual Mechanism for Criminal Tribunals, 2015). The Tribunal's headquarters is in Arusha, Tanzania, with additional offices located in Kigali, Rwanda. The Appeals Chamber is located in The Hague, the Netherlands. Since its inception in 1995, the Tribunal has accused 93 individuals of significant breaches of international humanitarian law during the 1994 genocide in Rwanda. Those charged include high-ranking military and government officials, legislators, businesspeople, religious figures, militia members, and media personalities (United Nations International Residual…, 2015). The ICTR has played a pioneering role in the development of a credible international criminal justice system, producing a substantial body of jurisprudence on genocide, crimes against humanity, and war crimes, as well as forms of individual and superior responsibility. It is the first international tribunal to issue verdicts on human rights violations. Furthermore, the ICTR has made several other significant contributions, such as being the first to interpret the 1948 Geneva Convention's definition of genocide, the first to define rape in international criminal law, and the first to acknowledge rape as a method of genocide perpetration (United Nations International Residual…, 2015).

Gacaca method

Gacaca is a tool for reconciliation, a way of sensitizing people to concerns, a powerful tool for social cohesion, and a sort of consensual justice that brings people together. Thus, the goal today would be to involve the public in the administration of justice in order to facilitate the effort of reconciliation while also reducing the strain on the legal system. Ending the legacy of violence, material reconstruction, comprehensive political solutions, including the orderly return of refugees, and social fabric mending are all necessary for reconciliation. The *Gacaca* system's potential contributions to the Rwanda scenario address both the first and fourth of the above reconciliation preconditions.

The major benefits of *Gacaca* as a traditional judicial system are said to include facilitating communal healing. It should be noted *Gacaca* system is a peace-building and post-conflict rehabilitation method and not a conflict resolution method.

The traditional system of *Gacaca* to a greater extent managed to re-establish societal trust more effectively than a punishment-based Western court system. The *Gacaca* institution, on the other hand, is a grassroots organization formed from the ground up by the people themselves. Its character might readily alter when it is structured from the top, by the government. Nonetheless, government involvement weakened the efficiency of the *Gacaca* courts. The decision to limit *Gacaca*

procedures to genocide crimes jeopardized its potential to offer accountability and advance the rule of law. Subtle government intimidation undermined the credibility of the courts, resulting in the convictions of thousands of people on false accusations and with insufficient evidence. In the end, *Gacaca* helped to perpetuate the exact ethnic distinctions that were at the core of the genocide, rather than to bridge the gap between perpetrators and victims (Longman, 2009).

While *Gacaca* is not a flawless model, it does present intriguing lessons for countries looking to enhance accountability and public discourse. If other post-conflict communities desire to emulate judicial systems like *Gacaca*, they must ensure that the courts are free of political meddling. They must also strike a balance when dealing with concerns of responsibility. Despite all of its flaw it has presented an interesting judicial precedent. The basic notion of *Gacaca*, i.e., integrating the general people in the transitional justice process, is expected to have a large international influence and be copied in many ways in many other cultures (Longman, 2009).

Evaluation of the effectiveness of International Criminal Tribunal (desk research) and *Gacaca* method (field research): A comparison

Determining the effectiveness or success of international criminal tribunals is a complex matter due to differing interpretations of their purpose. While scholars generally agree on the need for these tribunals, there is less consensus on their goals and how to maximize their efficacy. This is partly because the UN Security Council assigned these courts a multifaceted mission, as outlined in its resolutions.

For example, Resolution 955 specified three justifications for the establishment of the International Criminal Tribunal for Rwanda: to contribute to the maintenance of peace, guarantee the cessation and redress of violations, and facilitate national reconciliation (United Nations Security Council, 1994).

Typically, judicial institutions are not seen as instruments of peace and security in domestic societies, as law enforcement agencies are tasked with maintaining order. However, global judicial organizations such as the International Court of Justice and the International Criminal Court have been used to promote peace and security. Nonetheless, Roberts argues that neither tribunal has been successful in sustaining peace when evaluated (Roberts, 1998, p. 277). In the instance of the ICTR, he observes that "continuing bitter conflicts in the African Great Lakes region, including Hutu-Tutsi killings within Rwanda, do not suggest that the Tribunal has yet had a significant effect" (Roberts, 1998, p. 277). Shinoda also raises concerns about whether peace-building might collide with purely judicial needs: "Does justice really

contribute to peace? Should we reject unjust peace even in post-conflict regions?" (Shinoda, 2002, p. 5). Although the ICTR was established in a 'post-conflict' environment, the international community was concerned that revenge killings on the part of the Tutsis would undermine peace in the region. Since the establishment of the ICTR, estimates are that tens of thousands have perished in clashes between Hutu insurgents and Tutsi revenge killings. There has not been a peacekeeping presence in Rwanda. Even with peacekeepers, these judicial institutions will only be effective at promoting peace and security with the cooperation of law enforcement agencies. Indeed, the efforts of the tribunals have been stymied by not having their own law-enforcement personnel. It would appear that the ability of the tribunal to maintain and promote peace-building measures is limited by assistance from the international community. However, what would be the peace-building and security level without the ICTR? Akhavan argues that while conflict continues in Rwanda, the extent of revenge killings would be far greater in the absence of the ICTR: "Notwithstanding the various conflicts between the ICTR and the Rwandese government […] this policy of accountability, aimed at discrediting the Hutu extremists, has also restrained the extent of anti-Hutu vengeance killings […] the shadow of the ICTR proceedings […] have exercised a moderating influence in the post conflict peace-building process" (Akhavan, 2001, p. 23).

Also, a report by ICTR President Navanethem Pillay acknowledged that the process was unduly long. "Despite efforts of the judges and of all support sections, trials continue to be long drawn out and often defy the best-laid plans" (United Nations International Tribunal for Rwanda, 2002). However, the report notes that the trial and appellate proceedings are lengthy because judicial proceedings at the international level are far more complicated than proceedings at the national level. The report goes on to cite the problem of translating documents, interpretation of the trial proceedings into three languages, as well as the non-appearance of witnesses from Rwanda as the principal reasons why the process was so slow.

The goal of national reconciliation which is specifically mentioned in Resolution 955 is unique to the ICTR. It is a broad goal, and Shinoda argues that the Security Council did not unequivocally address a logical link between international peace and national reconciliation through such a compulsory tribunal (Shinoda, 2002). In the Security Council debate over Resolution 955, Howland and Calathes quote the Czech Republic representative who argued that the ICTR "is hardly designed as a vehicle for reconciliation… Reconciliation is a much more complicated process" (1998, p. 144). Fundamentally, national reconciliation is an internal, domestic process. The ICTR represents an international attempt to forge national reconciliation, because the national courts and government are either institutionally weak or not disposed

to healing the society (Shinoda, 2002). There have been well-publicized conflicts between the national courts and the ICTR. These conflicts have undermined the credibility of the ICTR in the eyes of many Rwandans. Because of its location in Arusha, the ICTR has been accused of being too remote from the people (both Tutsis and Hutus) to facilitate national reconciliation. Moreover, some have criticized the Tribunal because the majority of those that are convicted have not served sentences in Rwanda. At this point, 75 per cent of those convicted are serving their sentences in Mali. Three other countries including Benin, Swaziland and France had also agreed to accept ICTR convicts. Fundamentally, national reconciliation can only occur in an environment in which both sides feel that justice is being achieved. In order to promote national reconciliation, there cannot be 'victim's justice'. This is part of the problem with the stratified concurrent jurisdiction of the ICTR and the national courts. Morris argues that as long as individuals perceive that international as well as domestic judicial institutions are systematically biased towards one group, reconciliation will never occur: "If the leaders are away receiving 'international justice' which is perceived as lenient, and the followers are at home getting 'bargains' in the national justice system, then no one is punished fully" (1997, p. 365).

In contrast to the ICTR, the *Gacaca* courts – despite problems discussed above – were generally evaluated positively by most people. *Gacaca* contributed not only to a faster trial of the guilty but also to the avoidance of deep social divisions between the indigenous Rwandese. In order to evaluate the *Gacaca* courts, interviews were conducted between December 2020 and April 2021, especially on the procedures which included confessions, punishment or forgiveness then followed by reconciliation and integration into the society. Some individuals that were interviewed went further commenting on the International Criminal Tribunal in comparison with the *Gacaca*. It is quite difficult to get people who are completely willing to open up and talk about the genocide. The author understands that it might be really painful reminder especially to the victims who have lost their loved ones after this tragic event. Nevertheless, it is important to learn and understand this topic so that such an atrocity does not occur again in the African orbit. The opinions cited below come from interviews with the victims of the genocide, a retired journalist, a former member of the Rwandan government, and a former employee from a non-governmental organization:

- "The trials which mostly were conducted in fast manner put great pressure on the *Inyangamugayo* [English: *judges*] because they had the task of listening to a huge number of defendants. Therefore, the outcome of this scenario was them making hasty decisions that did not always implement the law, hence the need to scrutinize the process of attaining justice".

- "There were rumors and allegations regarding corruption by the *Inyangamugayo* who were awarded money from an accused person. For example, from my village I remember hearing about this scenario where the *Inyangamugayo* received 13,000 Rwandan Francs. Therefore, there was no way the decision or verdict reached would go against the accused person. Although in some cases individuals reported such situations to the authorities".
- "In my village during the *Gacaca*, the whole process went smoothly despite some minor challenges as well. The guilty person confessed the whole truth to the community, later on seeking forgiveness and reconciliation with the community. The *Inyangamugayo* would decide on the punishment such as to relocate this individual to another village or to pay some fines and reintegrate them back into the community but under certain conditions".
- "In the *Gacaca* courts, with its elements of reconciliation, punishment and the involvement of the population, suspects were encouraged to confess both before prosecution and then again following their hearing in return for a reduced sentence. Victims were equally encouraged to forgive perpetrators. *Gacaca* judges could sentence those found guilty to imprisonment, community service, or order them to make reparations to victims. *Gacaca* showed greater resemblance to restorative justice because the resolution of cases mainly relied on large-scale participation of the community members, who were called upon to testify on what they had endured, done, seen or heard" .
- "Some situations involved a falsely accused individual. In these cases, the panel (the *Inyangamugayo*) and the public took their time to research further to uncover the truth".
- "There were witnesses who had the true intention of rebuilding their broken and devastated country and they did so by describing what really happened. At the same time, some other individuals who had bad intentions that we cannot ignore were giving evidence out of jealousy. Usually in such situations, the *Inyangamugayo* would adjourn the session and conduct their own investigation. And then, they would use the result of the investigation to make the verdict".
- "It would take more than 100 years to convict the ones responsible for the genocide through the International Criminal Tribunal for Rwanda. The tribunal faced a lot of challenges, and while it might have had a genuine intention to convict the perpetrators, it would never have worked for the Rwandese".
- "The *Gacaca* method was an African peace-building blueprint aimed at repairing the repercussions of the genocide. Truth, forgiveness and

> reconciliation were important pillars of the process. In my opinion, *Gacaca* would have worked perfectly if the government did not interfere with the whole process. Therefore, it became a top-down approach rather than a bottom-up approach".

As it is in human nature, corruption and misconception are always present, as noted by some interviewees, highlighting clandestine payments made by some individuals in their attempts to evade justice. It is imperative to note that traditional tribunals bore great success as they were not only limited or blinkered by seeking justice, but instead, were tasked with finding truth and amicable solutions to ensure that people were well integrated and looking to the future, while also emphasizing the value of living in harmony.

Again, the interviews revealed the differences in people as some were a bit shy of the truth, which rather threw a spanner in the works. The indifferent approach in delivering verdicts and conducting further investigations in individual cases when the tribunal was not convinced that the witnesses were telling the truth is a major highlight in the conviction and commitment of the justice system applied at the time. Further conducting of investigations was pivotal in providing unparalleled and unadulterated truth in order to pursue the path of justice. What sets apart the tribunal system from the Western judiciary system is that it is based on the idea of Ubuntu, which is anchored in societal development, forgiveness, and compassion. Despite the challenges of being overloaded with multiple cases over a short period of time, the dedication and approach used by the tribunal system ensured a fairer verdict with a more constructive purpose, rather than confinement to justice which more often than not follows a black and white agenda as evidenced by the Western judiciary system. As noted in one of the interviews, the interference of the governmental organs was an obstacle to the success and effectiveness of the tribunal system, as the involvement of the government affected the truthful and pure intentions of the tribunal system. Involvement of the government takes away the purity of the whole *Gacaca* tribunes as bureaucracy often tends to delay and obscure the process; as it has been stressed, governments tend to use a top-down approach which does not address the real underlying issues but is usually set in a way that it serves a particular narrative. From the conducted interviews, the Author concluded that people were divided in their opinions and faith in the tribunal system, one of the underlying factors for this state of affairs was the issue of too lenient treatment of the procedure, as some people who had committed atrocities were accepted back into the communities with minimal punishment and at worst some had to be relocated into other villages and communities. Having a truth-seeking mission at the center of all the investigations and conflict resolution has been key to the success of the tribunal, as noted through

its handling of various cases and an independent method of dealing with them, rather than using a one-size-fits-all approach. The fact that the tribunes would adjourn in case one of the witnesses was lying or had other ill intentions during the hearing shows a levelheaded approach and also commitment to amicable solutions. Its weakest point was the large number of cases to be heard over a short period of time, thus the quality of the assessment could have been impacted by the fatigue of the tribunal as well as their race against time to cover as much ground as possible.

Conclusion

Peace-building continues to be an ongoing process that involves structural change in the society in the areas of culture, politics, social and economic aspects. The societal conceptions of peace and other underlying dynamics (internal/external) create the environment for successive peace-building, and the creation of a well-developed and sustainable peace society. At the very least, a lasting peace has resulted from these factors. However, shaky democratic institutions in many African nations have occasionally made the peace and stability vulnerable to violence. It is essential to establish values that serve as the cornerstones of a peaceful society because participation, social justice, equality, the eradication of poverty, and ideas of segregation among the populace all contribute to peace.

Traditional African approaches to conflict resolution and peace-building have highlighted the relevance of cultural processes, institutions, and values. Most people, families, and communities in Sub-Saharan Africa continue to favor indigenous dispute resolution systems because they are founded on well-understood and accepted cultural beliefs, values, and procedures (legitimacy). This has also made it simpler to incorporate indigenous conflict resolution systems into modern conflict resolution systems. People are comfortable with their cultural norms, making it simpler to accept the obligations that come with them.

It is in this framework that customary courts, with their provision for arbitration and mostly informal processes that are less threatening and widely known by the locals, function exceedingly effectively. The *Gacaca* demonstrates that when conflict resolution and peace-building procedures are founded on concepts that a community values and internalizes and are contextualized to reflect their collective knowledge and experiences, they have beneficial effects. The concepts of social coherence, harmony, openness/transparency, participation, peaceful coexistence, respect, tolerance, and humility, among others, are stressed as essential concerns in indigenous conflict resolution among African communities in this setting.

Conversely, it is worth noting that the newly independent states did not entirely discard their indigenous cultures and practices, including traditional conflict resolution mechanisms, after gaining independence from colonial powers. Western methods of administering justice and resolving conflicts, such as king's courts, council of elders, and open-air assemblies, gained more attention. However, it is argued that compared to modern legal settlements in courts of law, traditional African conflict resolution methods, such as mediation, adjudication, reconciliation, negotiation, and cross-examination, offer significant potential for peaceful coexistence and harmonious relationships in post-conflict periods.

Are African methods of conflict resolution and peace-building more effective for the African scenario than the Western ones? It is fair to say that given the customs and norms of Africa in general, African methods were most applicable and definitely recommended for the post-independence period, when African countries adopted the colonial systems of governments, administrations, justice, and languages. In Rwanda, the whole concept of truth and reconciliation has been pivotal in picking up pieces of a broken nation and finding a way forward. While it is not the best way to deal with atrocities, it should be recommended for its harmonious way of cementing and promoting nation-building.

Could the Rwanda Genocide of 1994 be considered a handbook case of why the UN is not effective especially when it comes to cases outside of the Western orbit? Surely its failures are well documented and shall forever remain a dark spot in the shortfalls of the UN, however, it is worth noting that this was an experimental stage, one that the organization has thoroughly learnt from and continues to learn from. In every failure there is more to be learnt and I believe that the UN has been improving from this harsh wake up call.

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