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EDITORIAL
Wars in the 'borderlands'

Richard Cornwell

The conflict in Darfur has occupied a considerable amount of attention over the last two years and, for all the wrong reasons, bids fair to continue doing so. On 9 February 2006, the Canadian government sponsored an ISS experts' workshop entitled 'Sudan: Developments in Darfur and Implications for the Region'. The meeting brought together members of the diplomatic, legal, military and academic communities to discuss certain aspects of the Darfur conflict that seemed to warrant fresh attention. Some of the contributions to that workshop are included in this edition of the *African Security Review*, either as articles or as commentaries.

We were indeed fortunate to be able to call upon the practical experience of Commander Seth-Appiah of the Ghanaian Navy, who served as military adviser to the African Union Mission (AMIS) in Darfur. He was able to illuminate several aspects of the mission's achievements and problems that are generally omitted from the public debate, and the allocation of blame for what many have, mistakenly, seen as an operational failure on the part of the African Union (AU). That

the militarily more powerful states of the international community still have not been able to shape a more effective response, even as preparations begin for re-hatting AMIS as a UN operation, bears witness to the diplomatic and political difficulties of intervention in such a vast and unfriendly environment while being obstructed and even attacked by well-armed belligerents. Whether even a peace agreement in Darfur will actually lead to a monitoring mission strong enough to provide adequate protection to the region's civilian population and the aid workers upon whom they have to depend at present, remains a moot point.

The article by Cécile Aptel Williamson provides expert analysis of the potential role of the International Criminal Court (ICC) in investigating the commission of serious crimes against humanity in Darfur. She examines the mandate of the ICC, the practical problems it confronts and the political environment in which it is forced to operate. She also suggests good reasons why the authorities in Khartoum would be reluctant to allow the deployment of a UN force, which might facilitate the collection of vital evidence.

At the time of going to print, the outcomes of the seventh round of Darfur peace talks in Abuja were still uncertain. The Khartoum government has indicated a willingness to accept the principles of the agreement suggested by the AU's mediators; the rebels have signalled their misgivings and requested a measure of renegotiation, which seems unlikely to materialise currently. For its part, the Sudanese government has assumed a cooperative role in public, even as it continues its military operations in Darfur. It is eager to avoid censure for its alleged role in attempts to unseat Chad's President Déby, and will also use any rebel intransigence to delay or prevent the deployment of a UN mission in Darfur. It will then be up to the international community to decide what to do: whether to attempt to muster support for some form of intervention over the objections of Khartoum and its diplomatic allies, or to provide support to shore up the AMIS force, which has been helpless to address the most serious violations by all parties to the Darfur ceasefire.

Of course, even were the Abuja accords on Darfur to be initialled by all parties, the issue of monitoring compliance would remain a serious problem. And as has been suggested by so many case studies in Africa and elsewhere, delays between reaching an agreement and implementing it may prove fatal, even when all parties are genuine in their undertakings, which itself is rare enough. One aspect of the problem is that the relative political and military strengths of the parties involved, and the positions of power enjoyed by the individual signatories, change over the intervening period, so that the longer implementation is delayed, the greater the number of demands for revision or reinterpretation of the original deal.

Two of the contributions to this issue deal with the case of Somalia, where the outcome of some fourteen attempts at resolution and the establishment of the foundations of a reconstructed Somali state still remains uncertain. These two contributions go some way towards explaining why this

should be, and also illustrate why returns to a *status quo ante bellum* are virtually impossible to achieve. Civil wars, in particular, change the entire economic and political fabric of the societies they afflict, altering the power relations within them in ways that are, in the strictest sense, irreversible.

The Darfur and Somali cases also raise some interesting and vital questions about the nature of state power in what could be designated 'borderlands' in the broadest sense of the term. To what extent has a 'modern' state ever played a role in providing for the welfare and security of the inhabitants of these regions? Siad Barre's Somalia was a creation of Cold War donor politics dedicated to the realisation of an irredentist agenda. When these props failed, the state collapsed.

Darfur has always had a marginal role in the politics of independent Sudan, its peoples most frequently regarded by Khartoum's political elite either as soldiers for its wars against the secessionist south or, in times of peace, as voters capable of providing electoral support from which they would reap little benefit. As for eastern Chad and the other territories bordering Darfur to west and south, for decades these had been areas of warlord contestation, in which nominal control of a largely fictitious state represented the greatest prize, but not final peace.

Left pretty much to their own devices, the communities occupying these troubled territories might have found ways to resolve their mutual differences short of causing the deaths of hundreds of thousands of people, almost all of them civilians.The dynamics have worked out differently, as politicians aspiring to retain or acquire power at the centre of the state have instrumentalised identity in lethal ways to promote their agendas. The legacy of these tactics will be difficult to neutralise, let alone eradicate.

FEATURES

The African Mission in Sudan: Darfur dilemmas

Seth Appiah-Mensah*

For much of the past two years, the African Union Mission in Sudan (AMIS) has managed to achieve a semblance of stability in much of Darfur, which has been reflected in the improvement of humanitarian conditions. At the same time, the mission has come under serious international pressure to respond appropriately to the deteriorating security situation on the ground by enhancing its presence and effectiveness. Subsequently, following the decisions of the AU Peace and Security Council (PSC), AMIS has undertaken two successive enhancements. Although the last enhancement exercise was remarkably successful, it could not be considered complete without the provision of the outstanding personnel and logistics by both member countries and the international partners. Meanwhile, serious challenges continue to undermine the mission's effectiveness and its prospects, not the least of these obstacles being adequate funding. At present, the mission is in a dilemma with respect to its mandate, engaging with the parties, partners, implementation of the N'Djamena Humanitarian Ceasefire Agreement (HCFA), and the way forward, as the AU is now almost totally dependent on external donations to sustain its Darfur operations. This article therefore explores the way forward in all these thematic areas in order to make appropriate recommendations.

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Introduction

This article has been written against the backdrop of the huge security challenges facing Sudan. At present, the situation is generally highly fluid and uncertain in all the country's conflict areas and there are genuine fears that an 'arc of conflict' could emerge across Sudan's central belt, from western Darfur to the Red Sea region. Historically, Sudan's relations and interactions with its neighbours frequently have been troubled, and this also impinges on considerations of its internal security, especially in the case of Chad.

Ever since the deployment of AMIS in Darfur some two years ago, the humanitarian conditions of many of the vulnerable have improved remarkably. Although the mission can take credit for these modest achievements, its operations and activities are still confronted by complex challenges. The coming into force of the N'Djamena Humanitarian Ceasefire Agreement (HFCA) of 8 April 2004 provided the initial mandate or the legal authority for the deployment of AU monitors in Darfur, but its implementation proved to be more challenging than anticipated. The difficulties inherent in implementation have included the lack of executive powers for the Joint Commission (JC), the admission of the representatives of the belligerent parties as integral to the Ceasefire Commission (CFC) at all levels of command and the requirement for their participation in all investigation patrols, and the lack of commitment of the signatories to adhere to the agreement. Other challenges have included a deterioration in the security situation as the various parties have persisted in their intransigence, force generation issues, over-dependence on partners, and the cross-border tension between Chad and Sudan.

Although this article is focused primarily upon the AMIS operation since the last enhancement exercise, it would be prudent to take a cursory look at the operation as a whole. Since a cardinal feature of an AMIS operation is one of partnership, it would also be useful to examine the cooperation mechanism between the AU and its partners in Darfur in order to bring to the fore critical lessons learned along the tortuous path towards establishing peace in Darfur.

Update on the security situation

Although there are many problems facing the Darfur region, it is axiomatic that security lies at the heart of the current crisis. Other issues related to history, culture, marginalisation, ethnicity and humanitarian dynamics further complicate the situation. Since the end of August 2005 the security situation has been very volatile, which is related to the outright disregard for the HCFA and related protocols by all the parties and other belligerents. The situation is currently characterised by:

■ mass movements and concentration of forces;

■ infiltration of Chadian rebels into the AMIS Area of Responsibility (AOR);

■ escalation in the number of ceasefire violations;

■ attacks on, and harassment of, AMIS personnel by armed militia and breakaway groups from the Justice and Equality Movement (JEM) along the Chadian border;

■ attacks upon, and hijacking of, NGO vehicles;

■ attacks on innocent civilians and the burning of villages;

■ collection of illegal tolls by the parties, especially in Sectors 1, 2 and 8.

Serious divisions within the Sudan Liberation Movement/Army (SLM/A) leadership during the same period also exacerbated the already fragile situation as intra-SLA fighting and tension affected AMIS operations negatively, particularly in states in North and South Darfur.

Enhancement of AMIS II (AMIS IIE)

Against the background of the fluid security environment, in July 2005 AMIS successfully commenced its second enhancement exercise, also known as AMIS IIE. As of writing this article, the mission had successfully deployed 6,964 personnel of the 7,731 strength projected, representing some 80 per cent of its full complement. AMIS is still awaiting the South African contribution to increase that country's enhanced company to battalion strength and provide the Force Commander's reserve at the Forward Headquarters (FHQ). On completion of AMIS IIE, the military component was expected to comprise three Nigerian battalions, three Rwandan battalions, one South African battalion, a South African engineer company, a South African FHQ Reserve, a Senegalese battalion, a Kenyan Military Police Detachment and a Gambian FHQ company. Together with the 700 military observers (MILOBs), the military component would number 6,171. The Civilian International Police (CivPol) have also made significant progress in deploying 1,320 out of the 1,560 authorised for AMIS IIE. Contrary to expectations, however, this significant increase in numbers does not necessarily translate proportionally to the operational efficiency and effectiveness on the ground, mainly because of the lack of appropriate equipment and inadequate or lack of proper interpretation of the mandate by commanders.

Logistics and funding for AMIS IIE

Though AMIS is to be commended for the rapid deployment of its authorised troops during the enhancement, the same cannot be said for the arrangement of logistics and funds to support the

new force. The mission, therefore, has had to operate with about half its critical force enablers, such as vehicles, ICT equipment and other logistical requirements. For all these, AMIS depends entirely on the benevolence of partners; and even where the partners want to provide cash, the AU does not have procurement capacity for such bulk purchases. On this the chairperson of the commission could not be more blunt:

> … it is important to note that, in the area of procurement the AU neither has the logistical infrastructure nor the experience to handle bulk and urgent purchases, worth millions of dollars, for such large operations.[1]

As of writing this article, AMIS had no predictable funding beyond 31 March 2006. It was therefore vital that the European Union (EU) made available to the AU €70 million (US$84 million) by way of the Africa Peace Facility Fund. The United Kingdom (UK), Canada and France have also donated additional funding to cover various aspects of the operation.[2] These pledges notwithstanding, there is an additional requirement for US$4.6 million to enable the mission to continue to the end of March 2006. Clearly, there are signs that the AU partners are acutely aware of the embarrassing consequences should the mission fold as a result of lack of funding. This is an important observation, because the responsibility to protect in Darfur is a global one, and this collective obligation must strengthen the resolve of the international community not to fail.

Given the sheer size of Darfur, the absence of a road network and other infrastructure, the AMIS mission depends heavily on air assets. In this area the governments of Canada and the Netherlands have been extremely generous: of the entire helicopter fleet of 28 that the mission has in its inventory, Canada has provided 25 and the Netherlands the remaining three. In addition, the Netherlands is funding the lease of four fixed-wing aircraft to lift goods and personnel from Khartoum to the field and within the theatre. In addition to the air assets, the Canadian government has donated 105 armoured personnel carriers (APCs),[3] which have already been inducted into the mission. The APCs were assembled in Dakar, Senegal, where the AU turret operators and drivers were trained in their use. The APCs were planned for induction in the AOR in early September to coincide with the end of the original plan of deployment of the troops, but bureaucratic delays on the part of the authorities in Khartoum were ended only after strong diplomatic intervention.

Achievements: AMIS – so far, so good

Political

AMIS political initiatives and activities span the whole spectrum of the political activities undertaken to facilitate the peace process. They involve the use of good offices and political support for the

Comprehensive Peace Accord (CPA) in the South and the Abuja Peace Talks for the Darfur crisis, engaging officials of the Government of National Unity (GNU), the diplomatic community, the United Nations Mission in Sudan (UNMIS), other UN agencies, media, academia, leaders of communities and parties at local levels and military diplomacy. These activities tie in neatly with the objective of pursuing a political solution to the crisis. AMIS personnel give considerable assistance to the Mediation of the Peace Talks in Abuja, where, unfortunately, the expectations of the international community have yet to be met. Dr Salim Ahmed Salim, the AU Special Envoy for the talks, recently expressed his disappointment with the slow progress owing to what he described as inflexibility, suspicion and the absence of minimum confidence.[4] Earlier he had described the talks as "disturbingly and agonisingly slow" when he addressed the UN Security Council in New York.[5] It is significant, however, that there is international recognition that Abuja is the only viable negotiating forum. That the parties are actively engaged in the talks is an achievement in itself and may explain why despite increased violations in Darfur, there has been a significant reduction in the number of inter-party conflicts.

As the Head of the AU Mission in Sudan, the Special Representative of the Chairperson of the AU Commission (SRCC) is the principal facilitator for the political process and head of the AU presence in Sudan. In this capacity he strives to attain legitimacy and credibility by dealing with the parties, the partners and the wider international community as impartially, frequently and transparently as possible. He achieves this through personal involvement where necessary, but also through delegated authority in the field. Significantly, and to the credit of the incumbent, there is an open-door policy at the Mission Headquarters which practically gives all staff members access to the SRCC, including the local staff. At the FHQ, the Deputy Special Representative of the Chairperson of the AU Commission, who also serves as the chairman of the CFC, leads the political engagement with all parties and representatives of the international community. He is ably assisted by the military and CivPol leadership at all levels of command through regular military diplomacy. The December Assessment Mission noted:

> … that, through its military diplomacy and the efforts of the CFC, the expanded AMIS has increased contacts with rebel groups and local government representatives throughout Darfur. In addition to pre-empting violence, this combination has improved monitoring of the parties' compliance with the N'Djamena Humanitarian Ceasefire Agreement.[6]

One significant achievement of the presence of AMIS in Darfur is the relatively secure environment that it has created for unrestricted access by the international community, particularly the media, to undertake investigative journalism and reporting.

There was significant support for the SRCC when the government of Sudan (GoS) unilaterally declared Ambassador Baba Gana Kingibe *persona non grata* after the September 2005 press conference, at which he was very critical of the incessant violations of the HCFA by all parties. The courageous

stand and unequivocal support from the AU chairperson for his special representative during that critical period was commendable. Together with the support of the UNMIS hierarchy and the international community, the GoS had no option but to shelve its threat eventually.

Another area of political success in AMIS is the handling of the APC impasse. Initially, the GoS agreed that only 35 of the 105 APCs will be allowed into the mission. This was rejected by the AU and the international community, and after persistent demarches the GoS gave in and on 12 November granted approval for all 105 APCs to be inducted into the theatre.

Military component

Being the first and the largest of the three components of AMIS, the military undertakes a great many tasks in fulfilling the mandate. The military, deployed according to a revised Concept of Operations (CONOPS), has also seen the MILOB group sites (MGS) increase from 16 to 34. The basic unit of the military function is a MILOB team comprising representatives of the parties, AU partners and, of course, AU MILOBs. The team is normally escorted by a Protection Force of a section or more during patrols or investigations. The Protection Force also escorts AU or humanitarian convoys in the mission area, and in addition provides protection for the unarmed CivPol in their duties. To sum up, AMIS military tasks include:

■ monitoring, investigating and reporting ceasefire violations;

■ protection for MILOBs, CivPol and AMIS personnel and installations;

■ protection of AMIS contractors and their property;

■ protection of civilians and international staff of humanitarian community within capability and within vicinity;

■ escort of AMIS patrols;

■ escort of humanitarian convoys; and

■ providing a secure environment for the safe delivery of humanitarian assistance.

In carrying out these core functions the force often finds itself in harm's way, as recently demonstrated by the unprovoked attack on an AMIS escort near Khor Abeche by unknown armed group when four AMIS soldiers were killed, and the series of attacks in Kulbus general area perpetrated by splinter groups from the JEM also resulting in various fatalities. AMIS troops

have often demonstrated courage in the face of these dangers and also when civilians have been involved. In the recent outbreak of fighting between the SLA and GoS in Golo, AMIS provided protection for the staff of the NGOs and also assisted with their evacuation, an act that did not escape the attention of the international community. Also, in several instances, the military has acted as an interposition force to protect the vulnerable, especially internally displaced persons (IDPs), during imminent attacks. The rapid and timely deployment of AMIS to Zalingei, following a tense situation after the kidnapping of civilians by SLM/A, helped to prevent retaliation against IDPs; also the deployment of AMIS to Muhajeriya stopped the advance of GoS forces into this town and thus averted a probable displacement of some 40,000 IDPs.

It is hoped the operationalisation of the APCs will go a long way to boost confidence in AMIS personnel, enhance their capacity for self-defence and provide protection to civilians and the humanitarian community. It is possible that some of the more serious incidents could have been avoided with the effective deployment of the APCs.

CivPol component

Deployed in response to international outcry for immediate attention to critical security concerns that require appropriate police functions, the AMIS CivPol has made a remarkable progress in the protection of the vulnerable in the conflict. Although the CivPol CONOPs is basically drawn from the military one, it comes with some modifications and innovations as a result of the peculiarity of the GoS police organisation in Darfur. The AMIS CivPol undertakes the following confidence building measures:

■ establishing and maintaining contact with the GoS police authorities;

■ collaborating with the GoS police in day-to-day community policing activities;

■ performing village and town patrols, as well as patrols within IDP camps in the AOR, together with GoS police;

■ observing, monitoring and reporting the effective service delivery of GoS police;

■ investigating and reporting all matters of GoS police non-compliance with the HCFA; and

■ at the request of the GoS police authorities, assisting in capacity enhancement initiatives.

One of the cardinal requirements of AU CivPol is to monitor the GoS police to bring their standards up to international policing levels, thereby assisting them to win back the confidence of the civilian population. It is for this reason that the CivPol must coexist with GoS police and work alongside

them, a situation that the rebels have found very difficult to accept. Therefore, in addition to deploying with the military in all eight sectors and MGS, CivPol maintains three regional offices, commanded by regional commanders, in the three states of Darfur to ensure proper coordination and liaison at the appropriate level. The presence of CivPol in the IDP camps has curbed the violence and reduced the crime rate to very low levels. At present, of the 65 sensitive villages identified by the CivPol, 26 have operational police posts, which enable a round-the-clock presence in their IDP camps. The government of Norway, which provided for the initial 26 villages, has signed a contract with the AU to enable CivPol to cover all sensitive communities. Other non-traditional duties initiated and undertaken by CivPol include firewood patrols, escort of IDPs to water points, organisation of women's forums in the camps, and the screening of suitable movies to children in IDP camps. The positive impact of these initiatives is that it is now commonplace to observe the women asserting themselves on matters that affect their lives and that of their children. They have also embraced community-based policing concepts: foot patrols, person-to-person contacts, and meetings with the community to identify problems and seek a mutually satisfying solution. CivPol personnel are also exposed to danger just like the military, and in fact they have been victims. Importantly, the recent continuous presence of CivPol at the famous Kalma Camp, near Nyala, the joint patrols with the GoS police and outer perimeter patrols of the Protection Force have resulted in a remarkable reduction in the number of reported incidents.

Human rights and humanitarian component

The human rights/humanitarian segment is relatively new but appears to be making good progress irrespective of its inherent shortcomings such as lack of adequate personnel, training and logistics. In order to fulfil its tasks, the human rights officers of the AU work closely with their counterparts in the UN and other humanitarian agencies. Because of the lack of adequate personnel, the first three female human rights officers are deployed to the three states of Darfur, and not necessarily in conformity with the military sectors, to monitor, investigate and report on both human rights/ humanitarian issues. That means they have to work with two or more sector commanders on a daily basis, and at the same time develop a working relationship with the CivPol regional and sector commanders. They also act as the AU's focal point for coordinating the required humanitarian effort in conjunction with the Office for the Coordination of Humanitarian Affairs (OCHA) and other humanitarian agencies. To derive maximum benefit from this component the AU should recruit more staff to cover all sectors effectively. Generally, humanitarian conditions have improved throughout Darfur following the deployment of AMIS.[7]

AU-led Joint Assessment Mission

Another significant feature of AMIS has been the decision of the AU Peace and Security Council (PSC) to dispatch Joint Assessment Missions (JAMs) under AU leadership to undertake periodic

reviews of the operation. So far, there have been two such missions; the first one from 10 to 22 March 2005, and the second from 10 to 20 December 2005. During both missions the composition of the team reflected the interests of the AU and its partners. The first report identified critical institutional gaps, weaknesses, and logistical shortfalls, and accordingly made appropriate recommendations to the PSC. On the basis of these recommendations significant progress was made in the field in terms of institutional restructuring, human capacity building, logistical support, provision of additional air assets and APCs, increased force levels, slow but steady recruitment of international staff, and the appointment of two deputy Special Representatives of the Chairperson of the AU Commission, one at AMIS HQ in Khartoum and the other at the Forward HQ in El Fashir, where the latter also serves as the chairman of the CFC.

Under the leadership of the SRCC, the second mission visited the Forward Mission Headquarters in El Fasher and all the sectors and MILOBs groups sites in the AOR. This second mission differed from its predecessor in that, in addition to the traditional partners of the AU, it included representatives of the troop contributing countries (TCCs). Significantly, the report of the mission observed that "considerable progress had been made in the deployment of AMIS, which has expanded its presence from 16 to 34 locations within Darfur and established permanent civilian police posts in 26 out of 65 sensitive villages and IDP camps identified in the region".[8] As a result of this considerable progress in deployment AMIS has "contributed to the improvement in the humanitarian situation, as exemplified by the fact that aggregate malnutrition and mortality rates are now below emergency thresholds, that there have been no major epidemics and that there is a wide coverage of food aid".[9] This is not to say that mission had become complacent, however, for it also "noted that the situation remains fragile and vulnerable to shocks, given the high levels of dependency of millions of Sudanese civilians on humanitarian assistance, and the fact that protection concerns still remain paramount".[10]

Challenges

Mandate

After almost two years in Darfur, AMIS is still in a dilemma with its mandate. The second JAM report observed that the "current mandate is adequate" and recommended for it to be "interpreted flexibly and robustly in order to maintain the force credibility, and provide the necessary degree of protection to civilians within capabilities", but the current security dynamics cast doubt on the adequacy of these arrangements. It must be understood that the current mandate of AMIS established by the PSC on 20 October 2004 is an enhanced version of the HCFA, which was highly diluted and compromised to accommodate the concerns of the parties. In the main, the mission is mandated to:

- monitor and observe compliance with the HCFA;

- assist in the process of confidence building;

- contribute to a secure environment for the delivery of humanitarian relief and support the return of IDPs to their homes; and

- contribute to the improvement of the overall security situation in Darfur.

Critics argue that the mandate is not robust enough for commanders to protect civilians in danger within their capability and within their vicinity. Their concerns have become more relevant following the recent spate of attacks and threats to AMIS personnel and convoys in Darfur by the belligerents. It is further argued, therefore, that if AMIS continues to fail to protect itself against unprovoked attacks by armed elements, it will lose any credibility in Darfur as the only international force charged with the responsibility to protect civilians and the vulnerable in the war-torn region.

This notwithstanding, other good opportunities have been missed by the AU to strengthen the mandate during the two successive enhancement programmes. From the inception of the mission, many high-profile personalities and groups, particularly NGOs and the media, have strongly advocated a more robust mandate that would enable the mission to extend its protection to civilians in Darfur.[11] A comparison with the UNMIS mandate for southern Sudan[12] reveals that a broader mandate has been provided there, even where conditions are more benign. Although draft Rules of Engagement (ROE) akin to the UNMIS ROE are now in circulation in Darfur, the lack of critical force enablers, equipment and the chronic logistical shortfalls will continue to hamper commanders and deny them the flexibility and the robust interpretation of the mandate envisaged in the December JAM report. This report observed that some commanders lack a clear understanding of the ROE, and talk little of how they could enhance their operational capability. Although the JAM report noted that the mandate was adequate, it is believed that unless AMIS meets the expectations of the people of Darfur and the wider international community by providing adequate protection to civilians with its presence and robust intervention mechanisms, the debate about the inadequacy of its mandate will remain. Some have observed rightly that the AMIS 'protection by presence' strategy[13] has not been effective insofar as protection of vulnerable civilians is not guaranteed in the event of an escalation of the security threat. In multi-dimensional operations, the mandate alone will not make automatically for an effective force if the authority and capacity are lacking. For this reason the mandate must be unambiguous and achievable. But where commanders employ different interpretations of their mission, and equipment is in short supply, then clearly these fundamental principles have been violated. This is the perfect recipe for 'mission creep'. The report, however, conceded that the mandate may be reviewed in future

if current measures prove inadequate. The recent change in the command of the AMIS military component in which Major-General C R U Ihekire and Brigadier-General Frank Kamanzi took over as force commander (FC) and deputy force commander (DFC) respectively, presents another opportunity to introduce a fresh momentum into the military operations. There could not be a better time to strengthen the mandate and give AMIS a robust posture. However, conscious of the current financial difficulties facing the AU and the high probability of transferring the mission to the UN soon, the decision of the AU, based on the recommendation of the assessment report, to maintain the status quo is generally understandable.

The Humanitarian Ceasefire Agreement

The HCFA, which is the fundamental legal authority upon which the mission was launched, appears too generous to the parties with respect to their status in the Ceasefire Commission (CFC). In terms of the HCFA, each party to the agreement provides permanent representatives to all MILOB investigation teams, who are also on the payroll of the AU, and with the same status as the international MILOBs. Although some aspects of the modalities for the establishment of the CFC and the deployment of observers in Darfur have been overtaken by events, others remain problematic. The document states, *inter alia*: "To ensure command and control, all observers shall be answerable to the Chief Military Observer (CMO) … who in turn shall be answerable to the CFC … [A]ll observers … as well as members of the CFC, shall be funded through the budget of the CFC."[14] In an attempt to have the mission under way quickly, the AU may have been too magnanimous, and conceded too much. For example, living and working together with the representatives has serious consequences for security, intelligence and confidence-building. Most investigations have become hamstrung or hijacked as a result of this novel arrangement.

At the CFC, the representatives of the parties wish to be treated as superior in status and privileges to other MILOBs; the same is true at sector level, where commanders and team leaders have to contend with frustrations of dealing with the party representatives, whose lack of commitment makes the work very difficult. Given the fact that most of these representatives have satellite phones, they frequently have been able to frustrate investigations and patrols and manipulate the outcome of such investigations. It is for this reason that one report of Refugees International observed that the belligerents have informers built into the CFC mechanisms[15] and accordingly advised the AU to limit the involvement of outside representatives in investigations and adopt a model similar to the Civilian Monitoring Team (CMT) that was used in South Sudan.[16]

On the other hand, there are times when these representatives may facilitate liaison with their field commanders for the safe conduct of patrols, investigations, and operational visits and military diplomacy. It would seem, however, that the task of liaison could be undertaken without necessarily making these individuals an integral part of the mission. The current situation is an expensive

novelty, because the AU, which is operating under stringent budgetary constraints, is compelled to pay monthly mission subsistence allowances to some 90 representatives of the parties. Given that the entire strength of the MILOBs is about 700, this constitutes a significant expenditure merely for liaison work. The AU has missed opportunities to rectify this anomaly during subsequent reviews; so the mission may have to live with this situation since the parties consider their assignment with AMIS as an opportunity to make profits for themselves and their parties. Should there be any attempt to deprive them of this privilege at this stage, there will be fierce resistance from all the parties, with serious security implications.

Force generation issues

The mission's performance with respect to force generation, including the rotation of MILOBs and CivPol, has been tardy, at best. Initially, things were done haphazardly and the information flow on personnel movements to and from the mission was virtually non-existent, because there was no Darfur Integrated Task Force (DITF) to manage the mission, and the Peace Support Division (PSD) also lacked the requisite capacity. This created a situation in which there were no AU reception parties to meet most personnel arriving in the mission area and obviously no arrangements for accommodation in Khartoum or FHQ. Over time, with the enhancement of the capacity at the DITF, Mission HQ in Khartoum and FHQ in El Fashir, there has been a considerable improvement in pre-deployment planning and reception arrangements, although much remains to be done in the area of rotation of key appointment holders. For example, in a bid to allow more Africans to benefit from the mission, there is a strict ban on the extension of tours of duties by the AU. The unintended result is that most of the pioneer principal commanders of the mission and the key staff officers were scheduled for rotation or replacement between October 2005 and February 2006. In fact, most have already left the mission: they include the first Chief of Staff (FHQ), Deputy Commissioner of Police, Sector Commanders, Force Commander, Deputy Force Commander and all principal staff officers at FHQ. The Commissioner CivPol will also follow shortly. It is not hard to fathom the difficulties the new commanders will be confronted with in what is understandably a volatile environment. The DITF should be more flexible and conscientious with its planning in order not to lose such critical body of experience within such a short timeframe. Given the volatile security situation during the same period, such omissions could spell disaster for the mission.

AU partnership and capacity-building

One thing that continues to baffle observers is the inability of AMIS to derive maximum benefit from the numerous capacity-building programmes that partners bring to the mission. From experience, it is observed that most training and assistance packages sent to AMIS were put together by the partners themselves, with little or no input from the AU because the AU/AMIS does not either clearly state its requirement or know exactly what it wants. Meanwhile, the full benefits

of the training needs assessment that was conducted by the partners in collaboration with the AU[17] are yet to be realised. Another problem is the failure of the partners to coordinate effectively among themselves and with the AU prior to the implementation of the initiatives, which tends to make AMIS appear disinterested or unprepared. Other concerns also relate to a lack of capacity in the AU to generate appropriate human resources to meet critical timelines, as happened with the establishment of the Joint Logistics Operating Centre (JLOC) in El Fashir. Although the partners provided the experts on time, the AU staff for the JLOC were recruited only months later, giving the concept a foreign look, which also explains, in part, some of its initial setbacks. As a result very few Africans, if any, benefited from the valuable expertise of the first batch of partners at the JLOC. On the contrary, however, the provision of over 20 EU police advisors to AMIS was, without doubt, well planned and executed thanks to a series of meetings with EU delegations at the AU Headquarters in Addis Ababa, Mission Headquarters in Khartoum and the Mission in Darfur. The newly created African Standby Force Planning Elements (PLANELM) will have to put in place mechanisms to mainstream all these ad hoc arrangements in order to enhance the capacity of the African peacekeepers.

Engaging the parties

The second Assessment Mission pointed out that:

> [T]he effectiveness of AMIS is directly related to the level of cooperation it receives from the parties to the conflict. Thus far, that cooperation has been extremely inconsistent. On the one hand, there are continued bureaucratic obstacles to AMIS's ability to operate freely, through curfews, early airport closings and long delays in issuing permits and visas, while the use of white vehicles and aircraft in military operations puts AMIS, humanitarian organisations and civilian populations alike in danger.[18]

At the same time the GoS has not been able to either disarm or rein in the notorious *Janjaweed* militia and other armed groups, which continue to destabilise Darfur with impunity. As the mediation team at Abuja will also testify, dealing with the parties at any level is extremely frustrating. AU commanders in the field have therefore chosen military diplomacy as the principal tool to reach local leaders over outstanding issues and to boost confidence building. This notwithstanding, the experience is one of frustration as none of the local leaders can be trusted unconditionally, nor do they consider themselves bound by their words.

It should also be noted that the balance of power in terms of numbers and weapons between AMIS, on the one hand, and the belligerents on the other, has never been favourable to the mission, necessitating a cautious response on the part of AMIS commanders to rebel aggression

and attacks. And this becomes highly evident when the situation becomes localised at the MGS level and below.

The situation has been exacerbated by the 'permutations and combinations' that are currently characteristic of the leadership of the rebellion. The split in the SLA/M faction and JEM splinter groups have caused immense problems to the mission, and the involvement of Chad in Darfur's conflict further compounds the situation.

Chad-Sudan border

Observers of the AMIS operation would have noticed that the insecurity in Chad reflected in defections from the National Army in October 2005, and the subsequent skirmishes at the border with Sudan involving both Chadian and Sudanese rebels have introduced new dynamics into the Darfur equation that defy immediate solution. As a result, any agreement concluded in Abuja is unlikely to be conclusive if the Chadian situation is not factored in.

The way forward

It is appropriate at this stage to review the principal recommendations of the two JAMs to Darfur. The JAM urged Khartoum to fulfil its obligations in terms of the ceasefire agreement and various undertakings to the UN and provide all assistance to AMIS in executing its mandate. Likewise, it required the rebel movements to abide by their commitments, grant unrestricted access to AMIS in areas under their control, and desist from attacks on AMIS or humanitarian organisations. Continuous and frank engagement between AMIS and its international partners remains a *sine qua non,* especially as the mission prepares for a handover to UN control at some future date. In the meantime, donor commitment will have to be sustained. At present the Joint Commission is seen as ineffective, and the suggestion that unresolved issues be referred to the UN Security Council, where sanctions may be considered, seems sound if its credibility is to be established.

Mandate and the use of force

Should it become necessary for AMIS to stay in Darfur for a protracted period before the UN takeover envisaged by the Chairperson, it may be prudent to introduce mechanisms and innovations that will give the mandate a semblance of robustness in the short to medium term. A review of the mandate is unlikely at this juncture, especially since few see this as the nub of the problem. A more effective option would be to provide AMIS with a well-equipped Rapid Reaction Force (RRF) to serve under the command of the AMIS Force Commander, which would give him the much-needed operational muscle to respond appropriately and in timely fashion to contingencies. At the present juncture this

has become an urgent issue, given the factionalisation of the rebel groups, Chadian involvement, and the need to achieve better coordination with and between humanitarian agencies encouraging the return of refugees and IDPs to their homes. Thus, the focus and primary responsibility of AMIS must be the protection of civilians, and to do that effectively, the AU Mission must be robust enough to cover all hotspots and respond swiftly to any behaviour of peace 'spoilers'.

Engaging the parties

It is not unusual to hear of new armed groups in conflict situations because of internal strife and leadership problems, and the Darfur situation is no exception.[19] Together with the split in the SLA/M leadership and non-commitment of the parties to the HCFA and Abuja protocols, these new groups and their special relationship with the Chadian authorities or rebels have significantly changed the dynamics of the Darfur conflict. There is evidence of marriages of convenience and divorces between the main parties and the splinter groups, a situation that further complicates the problem. Until now the Abuja negotiators have not officially recognised all belligerents in Darfur or engaged them on an all-inclusive track. The frequent attacks by these groups on AMIS personnel along the Chadian border may reflect a protest against the exclusiveness of the Abuja Process. The negotiators also have to recognise the concerns of many of those commonly lumped together as *Janjaweed* and other armed militia, and identify their proper leadership for meaningful engagement.

Force generation

Although considerable progress has been made at the strategic level (the DITF, in identifying and assembling military and CivPol capability for the AMIS operation since its inception), much remains to be done in terms of the quality of key personnel and ensuring a smooth transition during the rotation of such personnel. Perhaps this twin problem could be addressed by ensuring that nominated officers are interviewed by a well-constituted panel and the rotation periods are staggered to ensure continuity. In addition, there should be a database of AU experts in AMIS who have benefited from the various capacity-building programmes in which partners have assisted the mission. This will go a long way to augment the continent's ability to create 'backstopping' capacity and assist Africans to take full ownership of future peacekeeping operations.[20] The African Standby Force (ASF), which will likely take over the duties of the DITF, should establish proper mechanisms and procedures to solve future force generation issues.

A transition strategy

The second AU-led JAM acknowledged that for the mission in Darfur to be sustained there was a need for an early consideration on all viable options, including the introduction of other international institutions. Since then discussions on the issue have decided in principle that the

UN should take over control of the mission, although the Sudanese government and its allies insist that a better-resourced AU mission would be preferred. Although, as at the time of preparing this article, no firm decision had been reached on the transfer of AMIS to the UN, this author believes that this is the most reasonable and sensible step for the AU while there is still credibility and support from partners. History is replete with examples of states that paid huge price for failing to recognise and take advantage of the war termination phase during conflicts. In the context of AU peace support operations, the current stage where a Comprehensive Peace Agreement between the parties is highly probable, coupled with the incessant logistics and financial nightmares, there could not be a better time for the AU to implement its exit strategy. This is not to suggest, however, that the challenges facing AMIS will disappear when the UN takes over the mission. But, if nothing else, the UN brings sustainable resources and predictable funding, which the suffering people in Darfur deserve. And in order to have a smooth transition from AMIS to a UN mission in Darfur, it will be imperative to develop a strategy anchored on lessons learnt from AMIS and the momentum built up by all aspects of the mission. Having been an active partner of AMIS from the beginning, the UN already has a head start for the takeover. That strategy must specifically address the weaknesses and the main challenges confronting the mission.

Although this is not a blueprint, the strategy could entail the following:

African Union

- Keep current mandate unchanged but strengthen it with the presence of a Rapid Reaction Force.

- Endeavour to bring AMIS IIE to full strength and operational capability as soon as possible.

- Give meaning to the ROE by making pocket-size copies for all soldiers.

- Seek amendment to the HCFA with a view to changing the status of representatives of parties from MILOBs to liaison officers who are neither organic to the mission nor on the payroll of the AU.

- Provide attack helicopters and night-vision capability to match the rapid reaction capacity: partners will be requested to assist since these are not available in Africa.

- Work towards maintaining an AU liaison office in the mission to provide an advisory role and communicate lessons from UN best practices.

- Request partner support to build an AU logistics base where all AMIS logistics would be transferred for future PSO in the continent. The staff of the AU Brindisi[21] could be picked from the current JLOC in AMIS.

United Nations

■ Have a clear, unambiguous and robust Chapter VII mandate. The experience of AMIS provides ample evidence that relying exclusively on the good will of the parties will render the mission hazardous, and therefore a Chapter VI mandate would be a non-starter.

■ Absorb AMIS completely in the interim, re-hatting the current force on the ground. Maintain the African 'face' of the mission for a while in order not play into the hands of zealots who might exploit the situation to call for *jihad* against troops from Western countries.

■ Set up a Joint Task Force, a DITF/DPKO special task force, to manage the mission for the interim period and work out the transition arrangements,

■ Request NATO to deploy an RRF with AMIS in the short term.

■ Pass an appropriate UN Security Council resolution to cover interim arrangements between UN and AMIS.

■ Formulate an immediate operational plan or concept for dealing with the Chad-Sudan cross-border instability and the proliferation of arms in the general area, including monitoring and intervention capacity in the territory of Chad.

■ Use its good offices to adopt an all-inclusive approach in its political engagement with the stakeholders, including regional actors, especially Chad.

■ Obtain the consent of all key belligerents and traditional authorities of Darfur before deployment.

■ Sustain military diplomacy on the ground by identifying and connecting with leaders of all belligerents at every level, including the *Janjaweed* militia and splinter groups of the rebel movements.

■ Hold peace 'spoilers' accountable and responsible through appropriate sanctions.

Conclusion

From the foregoing, it is self-evident that fashioning appropriate policy responses to Sudan's hydra-headed security situation will not be a simple process. At present, the focus is on the Abuja peace talks, and how these could impact positively upon the conflict zone. The restoration of security, however, will depend on a combination of many factors: the status of the current deployment of AMIS, the activities

and achievements of AMIS, challenges, and prospects for the mission's future as the UN gears up to take over shortly. By all measurable standards, and given the unfavourable operational circumstances, the performance of AMIS in Darfur has been remarkable, not least in providing the Abuja talks a platform for continuous dialogue among the parties and contributing to a stable environment for the delivery of humanitarian assistance. A critical challenge since the mission's inception has been the non-commitment of the parties to the N'Djamena Agreement and related protocols; a behaviour that has encouraged all other belligerents and political actors in Sudan to act with impunity. The new agenda should seek ways of making these stakeholders take ownership, and respect the spirit and the letter of the agreement. Add to this is the need for a resolution by the international community to hold the parties accountable should they fail to comply with the provisions of the agreement. This is fundamental to the peace process, and must form the main building block for further prospects.

Last but not the least, the international community must commit itself to strengthen AMIS in the interim to consolidate the gains, working together with AMIS and UN to ensure a smooth transition devoid of shocks to the humanitarian and socio-economic conditions in Darfur and maintain the momentum for the Abuja peace talks between the GoS and the Darfur rebels.

Notes

1   African Union Peace and Security Council (AU PSC), Report of the Chairperson of the Commission on the Situation in Darfur (Sudan), 12 January 2006, p 16.

2   Ibid, pp 16–17.

3   The need for additional APCs has been regarded by many as essential for AMIS. This equipment could provide measure of protection for the AMIS troops, boost their confidence, ensure robust and proactive patrols and enable AMIS to better provide protection to the vulnerable.

4   See African Union Press Release 19,18 January 2006.

5   See AU PSC, Report of the Special Envoy to the UN Security Council, 13 January 2006.

6   AU PSC, Report of the Chairperson of the Commission on the Situation in Darfur (Sudan), op cit, p 27.

7   See UN, Report of the UN Panel of Experts, 9 December 2005, p 19.

8   AU PSC, Report of the Chairperson of the Commission on the Situation in Darfur (Sudan), op cit, p 28.

9   Ibid.

10 Ibid.

11 There have been several calls on the AU to review the mandate, and elsewhere this author has argued the mandate was restrictive, see Appiah-Mensah, AU's critical assignment in Darfur, *African Security Review* 14(2), 2005,

p 13 and International Crisis Group, *Darfur: The failure to protect*, Crisis Group Africa Report 89, 8 March 2005, p 18.

12 See UN, Security Council Resolution 1590, adopted on 24 March 2005, pp 3–4.

13 International Crisis Group, op cit, p 6.

14 See the Agreement Between the Parties on the Modalities for Establishment of the Ceasefire Commission and the Deployment of Observers in Darfur, 28 May 2004, para 5.

15 Refugees International, No power to protect: The African Mission in Sudan (AMIS), November 2005, p 15.

16 Ibid, p 7. See also the UK House of Commons International Development Committee, Darfur, Sudan: The responsibility to protect, Fifth Report of the Session 2004–05, p 46, for observations this writer and others have raised on the same issue.

17 AU PSC, Report of the Chairperson of the Commission on the Situation in Darfur (Sudan), op cit, p 17.

18 Ibid, p 27.

19 International Crisis Group, op cit, pp 12–13.

20 See Funmi Olonisakin, African peacekeeping at crossroads: An assessment of evolving peace and security architecture, September 2004, UN Peacekeeping Best Practices, p 2.

21 Brindisi is the main UN logistics base in Italy.

Justice empowered or justice hampered: The International Criminal Court in Darfur

Cécile Aptel Williamson⋆

It came as a surprise to many international observers when, on 31 March 2005, the United Nations Security Council passed resolution 1593, which referred the situation in Darfur to the jurisdiction of the International Criminal Court. Some celebrated this event as initiating a new era in which international criminal justice would prevail, but they might have done well to consider the objections immediately raised by the representatives of the Sudanese government, which was not a party to the ICC, a point that created a series of impediments to the implementation of the resolution. For all that the ICC has been charged with investigating crimes against humanity in Darfur, its investigators are being prevented from seeking the evidence on the ground essential to any successful prosecution. The Sudanese government has so far maintained its obstructive position, arguing that it is capable of handling such cases within its own sovereign jurisdiction. The imperative of excluding the ICC from Darfur has contributed to Khartoum's objections to the deployment of a UN force to replace the African Union mission there. In sum: the challenges faced by the ICC in Darfur demonstrate that international criminal justice does not operate in a political vacuum.

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Introduction

In March 2005, when the United Nations (UN) Security Council decided to refer the situation in Darfur to the International Criminal Court (ICC),[1] supporters of such legal action were quick to celebrate victory and to proclaim the advent of a new era in which international criminal justice would prevail.

Now, a year later, it appears that the ICC's investigators have yet to set foot in Darfur to begin gathering information on the ground.[2] The ICC prosecutor, Luis Moreno Ocampo, has repeatedly reported to the Security Council the numerous difficulties his team encounters, notably in providing protection to potential witnesses.[3]

In this context, it may be asked whether the ICC is "justice empowered by the might of international politics", or "justice hampered by the lack of political will to support it", notably on the part of Sudan. In light of the limits of the mandate of the ICC, and of the challenges it faces, what can it reasonably be expected to achieve in Darfur?

The ICC's mandate in Darfur

International observers were slightly surprised when, on 31 March 2005, the Security Council of the UN adopted resolution 1593, in terms of which it referred the situation in Darfur to the ICC.[4] Until then, any issue pertaining to this new international jurisdiction had divided the permanent members of the Security Council. China and Russia had opposed any international jurisdiction mandated to investigate war crimes, crimes against humanity and genocide. The European member states, on the other hand, had been strongly supportive, while the United States of America (USA) had often opposed it. In these circumstances, many had thought that the American delegation would veto the adoption of any resolution reinforcing the relevance of the ICC. Nevertheless, resolution 1593 was adopted, with 11 Security Council members voting in favour of the referral and four abstaining, including China and the US. This marked the first time the Security Council had referred a case to the ICC.[5] The Security Council's decision to do so was based *inter alia* on the report rendered on 25 January 2005 by a UN Commission of Inquiry it had previously established.[6]

This UN Commission of Inquiry, or so-called Cassese Commission,[7] had been mandated by the Security Council to investigate reports of crimes committed in Darfur. In its final report, the commission found that:

> … the Government of the Sudan and the *Janjaweed* are responsible for serious violations of international human rights and humanitarian law … Government forces

and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity. The extensive destruction and displacement have resulted in a loss of livelihood and means of survival for countless women, men and children …[8]

In their discussions with the commission, officials of the Sudan stated that any attacks carried out by government armed forces in Darfur were "for counter-insurgency purposes and were conducted on the basis of military imperatives".[9] The commission considered however that "most attacks were deliberately and indiscriminately directed against civilians".[10]

In response to the critical question as to whether Sudan had committed genocide, the commission responded that "the Government of the Sudan has not pursued a policy of genocide … The Commission does recognise that in some instances individuals, including Government officials, may commit acts with genocidal intent. Whether this was the case in Darfur, however, is a determination that only a competent court can make on a case by case basis."[11] Interestingly, the commission compiled a list of names of individuals identified for their responsibility for serious violations of international human rights law and international humanitarian law, including crimes against humanity or war crimes.[12] Although the list remains officially sealed, it apparently includes government officials, members of militia forces, of rebel groups, and certain foreign army officers acting in their personal capacity.[13]

The commission also considered the best means by which to render justice to the victims in Darfur and to hold accountable those responsible for their crimes. It recommended that the Security Council refer the situation of Darfur to the ICC, finding that:

> The Sudanese justice system is unable and unwilling to address the situation in Darfur … [M]any of the laws in force in Sudan today contravene basic human rights standards. Sudanese criminal laws do not adequately proscribe war crimes and crimes against humanity, such as those carried out in Darfur …. [M]any victims informed the Commission that they had little confidence in the impartiality of the Sudanese justice system and its ability to bring to justice the perpetrators of the serious crimes committed in Darfur.[14]

In the ensuing resolution 1593, the Security Council, acting under Chapter VII of the UN Charter, recorded its decision that "the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution …".[15] Thus, the Security Council made it a legal obligation for Sudan, which is not a state party to the treaty establishing the ICC, to cooperate with this court.[16]

Many of the supporters of international criminal justice were so busy celebrating what they saw as a great victory that they may have overlooked the statements made by Sudan's representative when resolution 1593 was adopted: "[O]nce more, the Council had persisted in adopting unwise decisions against [my] country, which only served to further complicate the situation on the ground." [17]

The Sudanese representative reminded the Security Council that Sudan was not a party to the ICC, making implementation of the resolution fraught with procedural impediments, and declared that: "As long as the Council believed that the scales of justice were based on exceptions and exploitation of crises in developing countries and bargaining among major Powers, it did not settle the question of accountability in Darfur, but exposed the fact that the ICC was intended for developing and weak countries and was a tool to exercise cultural superiority." He pointed out that the Security Council had adopted the resolution "at a time when the Sudanese judiciary ha[d] gone a long way in holding trials, and [was] capable of ensuring accountability".[18]

Whether or not the Sudanese judiciary by then had gone a 'long way' in ensuring accountability, it is clear that the adoption of resolution 1593 prompted the government of Sudan to intensify its efforts in this vein. On 7 and 11 June 2005, only a few weeks after the adoption of resolution 1593, Sudan created a Special Court for Darfur.[19] It was announced that some 160 suspects had been identified for prosecution.[20] During the second half of 2005, however, the Special Court conducted only six trials, involving 26 defendants.[21] Of the latter, 18 were low-ranking members of the armed forces, including eight members of the Popular Defence Forces; the others appear to have been civilians.[22] Reportedly, the cases included one charge of intentional wounding, two charges of murder, one charge of rape, three charges of armed robbery, one charge of theft of livestock, and two charges of possession of firearms without a licence.[23] The court has so far convicted 13 of these defendants, including one juvenile.[24] In November 2005, just prior to the date on which the ICC prosecutor was due to report to the Security Council on the progress of his work in Darfur, Sudan expanded its Special Court for Darfur to include permanent seats in each of the three Darfur states: two new Special Courts, to sit in el-Geneina and Nyala, were thus established by decree.[25] So far, the Special Court in the West Darfur capital el-Geneina appears to have dealt with only one case, that concerning policeman Jamal Zacharia, who was accused of killing a student who tried to demonstrate against an attack by militias on a Darfuri village.[26] It was reported that Judge Ahmed Abou Zaid, head of the court, declared: "This is the only case so far before the court."[27]

In addition, various other mechanisms and committees have been established in Sudan, including centres for the elimination of violence against women, a unit for fighting violence against women within the ministry of justice, and an attorney office for crimes against humanity. The GoS has also pointed to efforts to promote tribal reconciliation.[28] In February 2006, the head of the Sudanese Governmental Human Rights Advisory Council, Abdel Monim Osman Taha, handed to the UN

a list of "individuals of the regular services who have been tried for perpetrating crimes connected with the Darfur conflict".[29]

Showing that it is indeed able and willing to investigate and try the crimes committed in Darfur is crucial for the Sudanese government if it wants to diffuse pressure from the international community and attempt to avoid the ICC's intervention. The ICC was conceived as a court of last resort, complementary to national criminal jurisdictions. It can intervene only when there have been no national investigations or prosecutions of the cases selected for prosecution by the ICC, or there has been an investigation or prosecution, but it is vitiated by an unwillingness or inability to carry out the investigation or prosecution in a genuine manner.[30] In other words, as stipulated in the ICC Statute, the ICC prosecutor must establish that Sudan is either unable or unwilling to investigate or prosecute those cases selected for prosecution by the ICC.

In assessing the efforts made by Sudan to try cases stemming from crimes committed in Darfur, in his last report the prosecutor sidestepped the issue somewhat, choosing not to address the capability and capacity of the national jurisdictions to handle the cases, but rather to look at issues of security. To quote: "The continuing insecurities in Darfur currently prohibit the establishment of an effective system for the protection of victims and witnesses. This represents a serious impediment to the conduct of effective investigations into alleged crimes in Darfur by national judicial bodies."[31] The ICC prosecutor has been careful not to pass judgment on the judicial mechanisms put in place by the Sudanese government. In deciding that there is a reasonable basis to initiate an investigation into the situation in Darfur since 1 July 2002,[32] the prosecutor remarked that this decision did not represent a determination upon the Sudanese legal system, but was essentially the result of the absence of criminal proceedings related to the cases on which he would focus.[33] He explained that once specific cases have been selected, he would assess again whether or not they had been the subject of genuine national investigations or prosecutions.[34] The ICC is to continue to follow the work of the Sudanese mechanisms dealing with crimes committed in Darfur, and to examine whether or not they have investigated, or are investigating, the cases to be prosecuted by the ICC, and whether such proceedings are genuine.[35]

At this juncture, it is important to note that the mandate of the ICC is such that it will, in fact, handle only a limited number of cases, as it has jurisdiction for only "the most serious crimes of concern to the international community as a whole", namely genocide, crimes against humanity, and war crimes.[36] The ICC can charge only individuals – physical persons – who committed such crimes, intentionally ordered them, incited or assisted others to commit them.[37] It will also be able to judge individuals who, as military commanders or persons effectively acting as military commanders, failed to exercise control over their forces when they committed such crimes. In selecting the cases to be prosecuted, it is clear that the ICC prosecutor, taking into account his limited resources, will concentrate predominantly on those few people who bear the highest level of responsibility for the worst crimes. Thus, the scope of international prosecutions and trials is likely to be restricted

to a handful of high-ranking leaders, in line with the legacy of the UN International Criminal Tribunals for the former Yugoslavia and for Rwanda, and of their forefathers, the Nuremberg and Tokyo International Military Tribunals.

In this context, if Sudan wishes to avoid the reach of the ICC, it will have to demonstrate not only that it is trying some of the crimes committed in Darfur, but also that its judicial system is able and willing to successfully investigate and prosecute persons further up the hierarchy: those who ordered or failed to exercise control over the worst crimes committed in Darfur. Failure to do so would expose it to further international investigations and eventually prosecutions by the ICC.

The challenges faced by the ICC in Darfur

With Sudan construing international investigations and prosecutions as a form of imposed judicial intervention, as highlighted above, Khartoum's cooperation with the ICC may not be forthcoming. This could well hamper the ICC's progress, and raise evident practical concerns for its effective functioning.

According to the media, the GoS has repeatedly indicated that it would refuse to allow any Sudanese citizen be tried outside its national courts.[38] Recently, Reuters reported that: "Sudan says it will not allow ICC investigators to work on its soil, but will allow the ICC to visit its own national courts in Darfur, which it says are capable of prosecuting those responsible for war crimes."[39] This seems to confirm the statement made by the ICC prosecutor to the Security Council last December. He reported that Sudanese officials had agreed in November 2005 to receive ICC officials to Sudan, notably to visit the Sudanese Special Courts and other relevant judicial bodies, in order to assess national proceedings in relation to the alleged crimes.[40] He also indicated that another visit was due to take place by the end of February 2006. That a team from the ICC would visit Sudan by the end of February was recently confirmed by a British minister, who added that the visit would be the second visit by the ICC to Sudan.[41]

It would thus appear that, nearly a year after the ICC formally opened its investigation in Darfur, while some ICC officials may have been to Sudan, its investigators may yet have to set foot in Darfur itself.[42] Indeed, in December 2005, the ICC prosecutor indicated that all the investigative activities had so far taken place outside Darfur.[43] Interestingly, he mentioned on this occasion that he also had contacts with the principal rebel groups in Darfur, notably the Sudan People's Liberation Movement/Army (SPLM/A).[44]

In this light, it seems reasonable to wonder how much access the ICC investigative and prosecutorial teams will have in Darfur. To what extent can the ICC proceed with its work – investigate

the crimes committed in Darfur, identify those bearing the highest level of responsibility and indict them – without actually physically operating in Darfur? Even assuming that it proved possible for the ICC to complete its investigations and indict individuals without setting foot in Darfur, who would take the responsibility to arrest and transfer these persons to The Hague without the full cooperation of Sudan, and how would they carry out these tasks? Moreover, even if this hurdle were to be overcome, what is the likelihood of then being able to secure the appearance of Sudanese witnesses in court? The list of questions is endless, and all revert to the same single most critical issue for the ICC success in Darfur: the cooperation of Sudan. As amply demonstrated by the UN International Criminal Tribunal for Rwanda, the issue of cooperation lies at the heart of an international criminal jurisdiction's capacity to execute its mandate. To complete its work, the ICC will most probably have to rely on the GoS at each stage of the investigative and judicial proceedings, from allowing ICC personnel to travel to Sudan and Darfur to enabling them to collect crucial evidence – including meeting key witnesses, local officials, and searching through government archives – to arrest those accused, and secure the appearance of witnesses in court.

Furthermore, the cooperation of Sudan is vital to the ICC if it is to overcome the fundamental obstacles that are the sheer size of Darfur, the lack of even the most basic facilities, the remoteness of many areas. As these very obstacles hampered a military operation such as the African Union Mission in Sudan (AMIS), they are bound to cause logistical difficulties to the ICC, which does not benefit from the capacities available to a military operation.[45] Additionally, the prevailing insecurity not only makes the work of ICC investigators challenging, but also impacts on the safety of victims and other potential witnesses. There are serious risks that witnesses, including women and children who have been victims of terrible crimes, including rape and sexual violence, could face retaliation if they are seen to cooperate with the ICC. The ICC, which does not have its own police force, is at this stage apparently not in a position to provide any serious guarantees of protection to those potential witnesses located in Darfur. The ICC prosecutor has confirmed that the volatile security situation in Darfur, with continuing violence and attacks, has so far made it extremely difficult for the ICC to establish an effective system of witness protection.[46] Such a system is a vital precondition for the conduct of successful international investigations in Darfur. Consequently, without its own police force, the ICC will have to rely extensively on the support of the GoS to establish a system of witness protection, in the same way that the ICC will probably need its cooperation to secure the arrest of suspects or those accused. The operational paradox for the ICC is therefore apparent: on the one hand, it is expected to intervene in countries that are either unable or unwilling to investigate and prosecute those responsible for the worst crimes, while on the other, by its very nature, it has to rely heavily on the support of those very states to carry out its mandate. The unfortunate character of international criminal jurisdictions is that they are "giants without legs and arms" to use an expression coined by Professor Cassese.[47] In the absence of cooperation on the part of the state concerned, the only possible source of support that these giants can receive must be

the international community. This was demonstrated in the case of the UN International Criminal Tribunal for the former Yugoslavia, whose work, notably in Bosnia-Herzegovina, was supported by international military operations, from the United Nations Protection Force (UNPROFOR) to the current European Union Force in Bosnia and Herzegovina (EUFOR), through the North Atlantic Treaty Organisation (NATO)-led operation, which *inter alia* searched for and arrested several indictees. Is there an international force in a position to provide this type of support to the ICC in Darfur?

Despite its limited capacity, the 6,964-strong AMIS force, which began its operations in Darfur in August 2004, has been credited with helping to restore some calm to certain areas of Darfur, and allowing for the delivery of humanitarian assistance to the most affected populations. Ambassador Baba Gana Kingibe, representing the AU, explained that AMIS has been "the first ever African initiative by Africans in solidarity with their African brothers and sisters under the new principle of non-indifference".[48] However, the narrowly defined mandate of AMIS and its limited capacity do not leave scope for supporting the work of the ICC in Darfur.[49]

Change may be forthcoming, however, bringing good news for the ICC. Indeed, as AMIS' current mandate was to expire on 31 March 2006, the AU Peace and Security Council expressed its support in principle for a transition from AMIS to a UN operation.[50] Consequently, in early February, the UN Security Council asked the Secretary-General to begin contingency planning on options for a possible handover. The UN has suggested a peacekeeping force of up to 20,000 troops to disarm militias and provide security so that more than two million people can return home. Jan Pronk, the Special Representative of the UN Secretary-General in Sudan, noted recently that the UN had "the moral and political obligation to respond positively" if the AU decides to opt for the transition, because it forms part of the UN's mandate.[51]

The potential for the ICC, in having a new international force deployed in Darfur, with a broader mandate, was clearly understood by Human Rights Watch and the International Crisis Group. On 31 January 2006, they voiced their concerns in a joint letter to the Security Council, asking:

> … that the Security Council authorize, on an urgent basis, a transition of the African Union force in Darfur to a UN mission under Chapter VII of the UN Charter. Such a mission should have a strong and clear mandate that will allow it to protect itself and civilians by force if necessary … The mission should also be specifically empowered to provide appropriate assistance to the International Criminal Court's investigations in Darfur including the arrest of individuals indicted for crimes against humanity and war crimes … These measures should be part of a larger strategy that includes support for the International Criminal Court investigation in Darfur (as the Security Council has already agreed).[52]

It is indeed interesting to note that a new UN operation, which would be deployed at the request or with the authorisation of the Security Council, could put the giant back on its feet – or at least may make sure that it does not have to scrape around on its knees.

In this context, the continuing discussions pertaining to the possible replacement of AMIS by a UN peace operation established under Chapter VII of the UN Charter take on a new dimension. Recent statements by both the President and the Vice-President of Sudan underscore the fact that Khartoum rejects the replacement of AU forces with a UN peace operation.[53] "The government of Sudan strongly rejects the proposal of international forces to be deployed to Darfur and rejects the transition of operation in Darfur from AU to UN," Foreign Minister Lam Akol told a parliamentary session on 22 February 2006. "The UN has no mandate in Darfur, it is the AU that has the mandate there".[54] President Omar al-Beshir described plans for the UN to take over security responsibility from the AU as "dangerous" and warned that Darfur would become a "graveyard" for any foreign military contingent entering the region against Khartoum's will.[55] He declared that: "If the AU forces cannot carry out their mission because of financial problems, they should leave without looking for a substitute",[56] and called on the world to be aware of "the need for respecting the peoples' sovereignty".[57]

This opposition to a UN force can also be analysed in the light of the ICC investigations. Indeed, on the one hand, it is unlikely that the mandate of any AU operation would be widened to include assisting the ICC in its work in Darfur; on the other, it would be difficult to envisage that a new peace operation mandated by the Security Council in Darfur could not ultimately play a *de jure* or at least a *de facto* role in enforcing the terms of an earlier resolution adopted by the Security Council under Chapter VII, such as resolution 1593, according to which "the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution".[58]

Conclusion

Although there are reasons to be concerned about the seemingly slow progress on the part of the ICC in Darfur, there is hope that, were it to receive more support from Sudan or the international community, its work would become more expeditious. In any case, the referral by the Security Council of the Darfur situation to the ICC is already a success to the extent that it has undermined the prevailing impunity in the region. The referral sends out a strong signal to all those who bear the greatest responsibility for the worst crimes known to mankind, that, wherever they may be, and irrespective of whether their state is party to the ICC Statute, they could be held accountable for their crimes. It also sent a clear message to the peoples of Darfur that their sufferings are not ignored and that those at whose hands they suffer will be held criminally liable.

The challenges faced by the ICC in Darfur demonstrate that international criminal justice does not operate in a political vacuum. On the contrary, its success depends very much on the good will and cooperation of states. The ICC experience illustrates that political expediency weighs heavily in the balance of international justice. Ultimately, the support the ICC receives from Sudan, as well as from other states, the AU, and the international community as a whole, will determine in large part the extent to which the ICC achieves its goals in Darfur. If – as the current trend suggests – the ICC continues to be hampered by the lack of political support, notably on the part of Sudan, it may unfortunately become irrelevant to the victims of the terrible crimes committed in Darfur. If, however, the ICC is empowered by an international force intervening in Darfur, thus enabling it to meet the challenge of rendering justice, it will hopefully contribute to stabilising the situation in Darfur, as well as to possibly playing an important role in post-conflict reconstruction efforts, in Sudan and beyond.

Whatever happens, the obligations of the international community in Darfur do not stop with supporting justice efforts. As pointed out by Tod Lindberg in an editorial in the *Washington Times* just ahead the adoption of resolution 1593:

> There are some who would be content to let an ICC referral mask inaction to prevent mass killing in Darfur. That is unacceptable. A war crimes investigation makes moral sense only in the context of international action to halt the killing there. Otherwise, it is just a self-satisfied fig leaf … Darfur is about the challenge of keeping people alive – which in turn will entail being in a position to punish those guilty of war crimes to date.[59]

According to UN estimates, some 3.4 million people are affected by the Darfur crisis. An estimated 1.8 million people have been internally displaced and 200,000 have fled to Chad. The challenge is thus not only to try those responsible for the crimes committed, but also to halt these crimes. Indeed, the real urgency in Darfur is to keep people alive and to protect them. This clearly goes beyond the mandate of the ICC. But this falls squarely within the pledge made by the world's leaders when they assembled at the UN last September to abide by their 'responsibility to protect' the peoples of the world.

Notes

1   The ICC is the first permanent international criminal jurisdiction mandated to investigate and prosecute individuals responsible for the gravest international crimes: genocide, crimes against humanity and war crimes. It is a treaty-based jurisdiction, and its jurisdiction and functioning are governed by the provisions of its statute, adopted on 17 July 1998 in Rome, and often referred to as the Rome Statute. The Statute entered into force on 1 July 2002, and persons committing crimes after this date may be liable under certain circumstances for prosecution by the court.

2 See Second Report of the Prosecutor of the International Criminal Court, Mr Luis Moreno Ocampo, to the Security Council Pursuant to UNSCR 1593 (2005), 13 December 2005, p 4.

3 Ibid.

4 Resolution 1593 (2005), 31 March 2005. In paragraph 1 of this resolution, the Security Council decided "to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court".

5 The two other members which abstained during this vote were Algeria and Brazil. See UN Press Release SC/8351. The US Ambassador declared that it was important "that the international community spoke with one voice in order to help promote effective accountability. The United States continued to fundamentally object to the view that the Court should be able to exercise jurisdiction over the nationals, including government officials, of States not party to the Rome Statute. Because it did not agree to a Council referral of the situation in Darfur to the Court, her country had abstained on the vote. She decided not to oppose the resolution because of the need for the international community to work together in order to end the climate of impunity in the Sudan, and because the resolution provided protection from investigation or prosecution for United States nationals and members of the armed forces of non-State parties."

6 The UN Commission of Inquiry was established by the Secretary-General pursuant to Security Resolution 1564 (2004) of 18 September 2004.

7 The commission was named after its president, Professor Antonio Casssese, a renowned professor of international law, who also served as the first president of the first UN International Criminal Tribunal for the former Yugoslavia.

8 Report of the International Commission of Inquiry on Darfur to the UN Secretary-General, S/2005/60, 25 January 2005, p 3.

9 Ibid.

10 Ibid.

11 Ibid, p 4.

12 Ibid, pp 4–5. It was subsequently revealed by the ICC prosecutor that this list contains the names of 51 individuals.

13 This list was later transmitted to the ICC prosecutor. It has been the object of many rumours, and some of the names allegedly appearing on this list have been revealed in media reports.

14 Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, op cit, pp 5–6.

15 Resolution 1593 (2005), op cit, para 2.

16 For a legal analysis of this issue, see Luigi Condorelli and Annalisa Ciampi, Comments on the Security Council referral of the situation in Darfur to the ICC, *Journal of International Criminal Justice* 3(2), July 2005, pp 590–599. The government of Sudan has signed but not ratified the treaty establishing the ICC. Human Rights Watch noted in its 2005 Annual Report that the adoption of Resolution 1593 "means that the ICC henceforth has become a realistic option for prosecuting even tyrants whose governments have not ratified the ICC treaty".

17 See statements of the Representative of Sudan, Mr Elfatih Mohamed Ahmed Erwa, UN Press Release SC/8351.

18 Ibid.

19 See Second Report of the Prosecutor of the International Criminal Court, op cit, p 5.

20 Ibid.

21 Ibid.

22 Ibid.

23 Ibid.

24 Ibid.

25 Ibid.

26 Reuters, 14 January 2005.

27 Ibid.

28 Second Report of the Prosecutor of the International Criminal Court, op cit, pp 5–6.

29 Agence France Presse (AFP), 27 February 2006. The list apparently did not detail who the individuals were or what had been the nature of their trials.

30 See Article 17 of the Statute of the ICC.

31 Second Report of the Prosecutor of the International Criminal Court, op cit, p 6.

32 Decision to initiate an investigation, ICC Doc ICC-02/05-2, 1 June 2005.

33 UN Press Release SC/8429, 29 June 2005.

34 Ibid.

35 Report of the Prosecutor of the International Criminal Court, Mr Luis Moreno Ocampo, to the Security Council Pursuant to UNSC 1593 (2005), 29 June 2005, p 3, and Second Report of the Prosecutor of the International Criminal Court, op cit, p 5.

36 Article 5 of the Statute of the ICC. The ICC will also have jurisdiction over the crime of aggression, once this crime is defined.

37 Articles 25, 27 and 28 of the Statute of the ICC.

38 According to several press agencies, including AFP and Reuters, Sudan's President Omar al-Beshir vowed in April 2005 never to hand over any Sudanese national to international jurisdiction.

39 Reuters, 22 February 2006.

40 Second Report of the Prosecutor of the International Criminal Court, op cit, p 9.

41 Reuters, op cit.

42 Second Report of the Prosecutor of the International Criminal Court, op cit, p 4.

43 Ibid.

44 Ibid, p 9. The ICC prosecutor explained that he intends to keep open channels to offer an opportunity for all parties involved in the conflict to provide information and evidence to the court during its investigation.

45 See notably Seth Appiah-Mensah, AU's critical assignment in Darfur: Challenges and constraints, *African Security Review* 14(2), 2005, pp 7–21.

46 Second Report of the Prosecutor of the International Criminal Court, op cit, p 4.

47 As indicated *supra*, Professor Antonio Casssese served as the first president of the UN International Criminal Tribunal for the former Yugoslavia and as the president of the UN International Commission of Inquiry on Darfur.

48 AU Official Press Release, No 32.

49 Among other reasons, AMIS has been limited by its recurrent financial difficulties. In December 2005, the AU said that it needed an extra US$130 million to meet the demand of peacekeeping in Darfur.

50 12 January 2006. The Council was to hold another ministerial meeting in Addis Ababa on 10 March to discuss proposals for the UN takeover.

51 IRIN, 23 February 2006. In the meantime, consultations are taking place between the UN and the AU to ensure that the AU could stay as long as possible in Darfur, Pronk noted, "hopefully to the end of this year, at least". Referring to what he described as the misconceptions and concerns surrounding the proposed transition, Pronk emphasised that the UN would, in principle, not move in without the approval of the GoS, a peace agreement, or at least, a working and holding ceasefire agreement. Pronk underlined that it might take up to nine months to build up the 15,000-strong force that would be needed by the UN. Such a force, he stressed, would have an African character, and would not exclude troops from the existing AMIS forces.

52 Joint Human Rights Watch and International Crisis Group Letter to the Members of the UN Security Council Regarding Darfur, Security Council must take action to protect civilians in Darfur, 31 January 2006, <http://hrw.org/english/docs/2006/01/31/sudan12577. htm>.

53 AFP reported on 4 March 2006 that President Omar al-Beshir repeated his country's refusal to allow a UN-led troop intervention in Darfur: "We are opposed to foreign intervention in Darfur although we remain committed to cooperation with the international community." Vice-President Ali Osman Mohamed Taha made similar declarations.

54 IRIN, op cit.

55 AFP, 4 March 2006.

56 Xinhua, 25 February 2006.

57 AFP, op cit.

58 Resolution 1593, op cit, para 2.

59 T Lindberg, ICC offers Darfur hope, *Washington Times*, 15 March 2005.

The Somali Conflict: Root causes, obstacles, and peace-building strategies

Afyare Abdi Elmi and Dr Abdullahi Barise*

Unlike many African populations, the overwhelming majority of the Somalis are part of a single, homogeneous ethnic group. All Somalis are Muslim and share the same language and culture. Nevertheless, one of the most terrible civil wars in Africa has been waged in this country for more than two decades. Somalia has been without a functioning central government since the late dictator General Mohamed Siad Barre was ousted in 1991. This essay examines the root causes of the Somali conflict and analyses some of the obstacles that have plagued peace efforts for the last fourteen years. Finally, it identifies peace-building strategies that could help establish durable peace in Somalia. We argue that competition for resources and power, repression by the military regime and the colonial legacy are the background causes of the conflict. Politicised clan identity, the availability of weapons and the presence of a large number of unemployed youth have exacerbated the problem. With regard to the obstacles to peace, we contend that Ethiopia's hostile policy, the absence of major power interest, lack of resources and the warlords' lack of interest in peace are the major factors that continue to haunt the Somali peace process. Finally, we propose ambitious peace-building strategies that attempt to address the key areas of security, political governance, economic development and justice in order to build a durable peace in Somalia.

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Introduction

The Somali people have suffered from prolonged oppression and violence at the hands of their fellow Somalis. They have lived in difficult and harsh conditions under both democratic and military regimes. During the democratic era (1960-1969), independence and newly established state institutions failed to meet people's expectations. Poverty increased and security deteriorated. Moreover, corruption, nepotism and cronyism characterised state institutions.

The military regime took power in October 1969, but only made the situation worse. Siad Barre's government used indiscriminate killing, burning of villages and torture as instruments of control. Armed factions used the same tactics. As a result of the war and war-related causes, hundreds of thousands of Somalis lost their lives, and many more became displaced internally and externally. In this paper, we attempt to answer the following three questions:

- What are the causes of the Somali conflict?

- What explains the perpetuation of the civil war, or the failure of previous peace efforts?

- How can the Somali conflict be resolved?

Root causes of the Somali conflict

The Somali civil war has multiple and complex causes including political, economic, cultural and psychological. Various external and internal actors have played different roles during the various stages of the conflict. Based on our observations and readings of peace-building literature, we argue that the root causes of the Somali conflict were competition for resources and/or power, a repressive state and the colonial legacy. We also regard as contributing causes the politicised clan identity, the availability of weapons, the large numbers of unemployed youth, and certain aspects of the Somali culture that sanction the use of violence.

The most important factor that has created and sustained the clan-based militias' conflicts is competition for power and resources. As literature in this area suggests and the collective memories of the Somalis attest, Somali clans had often clashed over resources such as water, livestock (camels) and grazing long before Somalia became a sovereign country.[1] Using the widely accepted Somali traditional legal system *(Heer)*, historically traditional leaders settled these conflicts.

However, after Somalia gained its independence, many Somalis moved to urban areas, so the types of resources that are needed and the means used to obtain them have changed. Political

leaders realised that whoever controlled the state would control the nation's resources. Access to government resources, recruitment of civil servants and control of foreign aid replaced control of water wells and access to grazing issues in the countryside. For instance, Mohamed Jama Urdoh, a Somali journalist, observed Somalia's police forces in 1967. He revealed in an investigative report that more than 70 per cent (51 out of 71) of police-station chiefs were members of the same clan as the then police chief.[2] Moreover, the police chief was just one example of how government officials were misusing their power. Besides the political patronage appointments that characterised the civil service, corruption affected all levels and departments of the government. With regards to government policy, the frequently cited examples include the use of Somalia's police and army forces for clannish reasons. Within two clans, the Lelkase and the Ayr, there is a widespread belief that the government of the day and the police used excessive force against them.

As corrupt as it was, Somalia's first government was democratic. It had checks and balances and people could talk and address the corruption. The Somali leaders of the time were poorly educated novices with little experience in running a government. Nevertheless, the former prime minister, Abdirizak Haji Hussein, had some success in dealing with security and corruption problems during his reign.

However, when General Mohamed Siad Barre took over power in October 1969 things changed. For the first few years the revolutionary council built new institutions and wrote down the Somali language. However, the general's obsession with controlling and consolidating his power to the benefit of members of his clan became clear to all Somalis. Opposition groups were outlawed and no one could criticise the military leaders.

Since elites from specific clans controlled all levers of state power and the economy, the leadership of the opposition capitalised on this opportunity. After the 1977/1978 war between Somalia and Ethiopia, a number of military officers attempted to take over the government. When this coup failed, the Siad Barre regime started to use excessive force against the Majerteen clan (the clan to which most of the officers belonged). This event was the beginning of Somalia's civil war. Other clans such as the Isaaq, Ogaden, Hawiye and Digil and Mirifle also started opposition groups in order to seize power.

Current realities confirm this assertion that competition for power and/or resources was the leading cause of conflict among clans and militia groups. The civil war within the Hawiye, the Darod, the Digil and Mirifle, and the Isaaq clans was a resource- and/or power-motivated conflict. For instance, the Abgal and the Habargidir clans had never fought throughout their history and in fact belong to the same clan (Hawiye) and sub-clan (Hiraab). However, when Mogadishu fell to the United Somali Congress (USC) (to which they both belonged) a power struggle broke out between General Mohamed Farah Aideed and Ali Mahdi Mohamed. In addition, people interviewed confirmed that

the civil war between the Habargidir and the Hawadle clans started in Kismayo over the control of Kismayo port (when the USC controlled the city). Then there were other conflicts over the state farms in Qoryooley district. Finally, this war spread to the Mogadishu and Hiiraan regions.

The war between the Darod clans was similarly motivated. First, the Absame and the Harti militias fought over the control of Kismayo. Then the Mareehaan and the Harti clans clashed over the same issue. The recent civil war between the Majerteen sub-clans in Puntland was also motivated by power and resources. When Abdullahi Yusuf was voted out in 2001, he refused to accept his defeat and sought to retain control of the government by force. The same kinds of events occurred during the civil violence between the Isaaq clans in Bur'o and Hargeysa, and the continuing clashes between the Digil and Mirifle clans in the Bay and Bakool regions.

Looking at both past and present Somali conflicts, we think the most determinant and persistent factor that has ignited and/or sustained the violence has been competition for resources and/or power. As a result, control of a key city (Mogadishu, Kismayo or Baidoa), key ports or airports, important checkpoints, the resource-rich regions, banknotes, foreign aid or 'technicals' (the cars that carry heavy weapons) became closely contested resources among militia groups and various clans.[3]

State repression was the second major cause of the civil war. The Somali people experienced 21 years of a repressive military state (1969–1991). The military regime used excessive force and collective punishment to suppress opposition. The people had no mechanisms for registering their discontent. The system did not allow opposition forces to exist, let alone have a voice in important issues. When, in 1978, some military officers attempted to overthrow the military regime, the Siad Barre government used the national army and police to punish civilian members of the Majerteen clan. The military subsequently was involved in the killing of civilians, mass abuses and the destruction of areas inhabited by that clan.

The 1978 failed coup set a precedent for attempts by other Somali groups to challenge the regime. In 1981 some politicians of the Isaaq clan established an opposition movement (the Somali National Movement, SNM) in London, England. Again, the military government started to punish civilians. The Siad Barre regime destroyed Hargeysa and Bur'o and murdered many innocent civilians when the SNM attacked these cities in 1988.[4] Human rights organisations reported that more than fifty thousand people were killed in these conflicts.[5] As Fearon and Laitin wrote: "The more the collateral damage, the easier it will be for rebel leaders to recruit new members."[6] The greater the number of innocent civilians the government leaders killed or imprisoned, the more people rebelled and joined the opposition forces.

When the Somali Salvation Democratic Front (SSDF) (the Majerteen clan's opposition party) and the SNM (the Isaq clan's opposition party) started their armed struggle against the military regime,

Somalia and Ethiopia had hostile relations, so Ethiopia welcomed and armed all opposition groups fleeing from the repression in Somalia. Other opposition groups, such as the USC (the Hawiye clan's opposition party) and the Somali Patriotic Movement (SPM) (the Ogaden clan's party) organised their military activities from Ethiopia. Somalia's military government denied people the opportunity to participate in governing. Denied all other avenues to affect the change of the regime, opposition groups resorted to violence. The state's repression, violence and excessive force justified the power-hungry opposition leaders when they crossed the border and attacked Somalia from Ethiopia.

The third major cause of Somalia's civil war was the colonial legacy. The European powers (Britain, Italy and France) partitioned what some would call greater Somalia into five parts. Britain took two, Italy one and France one. The European powers gave the Somali region of Ogaden to Ethiopia's King Menelik to appease him. As Geshekter noted, from 1891 to the present, Ethiopia has been expanding to the east.[7]

The partitioning of Somalia permanently damaged the Somali people. Hadrawi, a great Somali poet, argues persuasively in several poems that most of the malaise in today's Somalia stems from the colonial system. He claims that the colonial powers destroyed Somalia's socio-economic system.[8] In addition, most of the resources of Somalia's weak and poor government were used to reunify the Somali people. The effect of the partition continues to haunt the Somali people since, according to this view, two Somali territories remain under the control of Ethiopia and Kenya. In addition, the two regions that formed independent Somalia are experiencing serious problems and the northern region (former British Somaliland) wants to secede from the south.

Competition for resources and power, military repression and the colonial legacy were the long-term or background causes of the Somali conflict. In addition, misuse of clan identity, the availability of weapons, the large number of unemployed youth, and some features of Somali culture that reward the use of violence significantly contributed to the formation and escalation of the conflict. We think of these factors as 'contributing causes'.

Contributing causes

Mere differences in clan identities themselves did not cause the conflict. Clan identity is not static, but changes depending on the situation. One can claim to be 'Somali' if doing so serves one's interests or wish to emphasise the link between two clans at national level. That same person may claim to be 'Irir', 'Hawiye', 'Hirab', 'Habargidir', 'Sa'ad' or 'Reer Hilowle'. These terms involve an example of descending levels of one's clan identity. The same is true of other clans regardless of whether they are in the north or the south. Clan identity is flexible. The emphasis on one level

over another reflects the interests and goals of the elites of that level. For example, when opposition leaders wanted to mobilise forces, they emphasised the most inclusive identities: the SNM leaders emphasised the grievances of the Isaq clan, whereas the USC leaders mobilised the Hawiye clan. The Somali Democratic Movement (SDM), on the other hand, organised the Digil and Mirifle clans in the south.

General Mohamed Siad Barre depended heavily on his own Mareehan sub-clan of the Darod clans. Opposition leaders from the Darod clan could not use the Darod banner because General Siad Barre was himself a member of the Darod clan. Therefore, the SSDF leaders depended on the Majerteen sub-clan of the Darod clans, while the Somali Patriotic Movement (SPM) drew its supporters from the Ogaden sub-clan of the Darod clans.

After 1992 the emphasis changed from inclusive clan identities (for example Darod or Hawiye) to sub-clan identities such as Harti, Mareehaan, Habargidir or Mudullood. For instance, when the power struggle broke out in 1991 between Ali Mahdi Mohamed and General Mohamed Farah Aideed (who both belong to the Hiraab sub-clan), the clan identities that mattered became those of the Muddullod and the Habargidir (their respective sub-clans). These clan identities fuelled the conflicts in Somalia, but did not, by themselves, cause the war. In other words, clan identity became an instrument for mobilisation.

The availability of weapons exacerbated the Somali conflict. The Somali people were well armed. There were two major sources of weapons. Because of Somalia's strategic location, the two superpowers of the time (the former Soviet Union and the US) competed to arm the former dictator. The second source was the Ethiopian regime, which was arming opposition groups. The availability of weapons, combined with all the above grievances and disputes, resulted in all-out civil war in 1988.

Somalia's large number of unemployed youth added fuel to the conflict. In the 1970s the Somali population was estimated to be about 5 million. Although no credible census has been taken, Somalia now has an estimated population of about 9-10 million. In the 1980s this increase created a young population with no employment opportunities. Somalia's government could not provide employment or a meaningful education. The private sector was under-developed as well. As a result, many young men were in a hopeless situation. Their despair provided the greed-driven elites, who wanted to pursue their own interests, with readily available human resources with grievances in a collapsed state context. Ultimately, the elites capitalised on this opportunity and organised the young men in a way that appealed to them.

Finally, some features of Somali culture played a significant role in providing the rationale for creating or perpetuating the conflict. As Kriesberg notes, people use their culture as a "standard

when judging what is fair and just".[9] In addition, Galtung argues that cultural violence legitimises other forms of violence (direct and structural). He writes, "Cultural violence makes direct and structural violence look, even feel, right – or at least not wrong."[10] He identifies four classes of basic needs: survival needs, wellbeing needs, identity needs, and freedom needs. If some aspects of Somali culture entail or encourage the use of force, it does not mean that Somali culture is violent as a whole.

We argue that three features of Somali culture reward violence, namely clan rivalry, collective punishment and negative competition. At times, a destructive conflict between clans starts over a mere expression of hostility. One may kill a member of another clan simply because the victim's clansmen have killed a person from the perpetrator's clan. The situation between the Dir and the Mareehaan clans in the Heraale district in 2003 is a recent example of such conflict. A member of the Mareehaan clan had killed a businessman from the Dir clan about thirteen years before. The victim's son took revenge by killing a wealthy businessman from the Mareehaan clan in 2003. Unfortunately, this conflict exploded and many people (some estimated about four hundred) lost their lives, while thousands were displaced.[11]

In addition to such expressions of hostility, most Somalis witness people using violence and benefiting from it. In the countryside, young men used to attack other clans and steal their camels. In the cities, the thousands of armed men benefit from using violence to force people to pay them illegally, and then justify their aggression by arguing that Somali clans have been fighting and robbing each other since time immemorial. Moreover, Somali literature provides many examples of poets defending the use of violence against other clans, or at least attempting to legitimise stealing their camels.[12] Use of force as an acceptable strategy is therefore rooted in Somali culture. In fact, one could argue that some features of Somali culture reward criminals who engage in violent activities.

Both greed[13] and grievances are present in the Somali conflict. Somalia's political elites were driven by greed for power and resources, as Abdi Samatar has rightly observed.[14] However, most of Somalia's people have legitimate grievances. The state failed to provide basic services such as security, education, healthcare and jobs. Moreover, the military government used force to repress people.

Obstacles to peace

Fourteen peace conferences have been held in different cities at different times. Five of these (Djibouti 1991, Addis Ababa 1993, Cairo 1997, Arta 2000 and Eldoret/Mpegati 2002-2004) were major conferences to which the international community lent its support. Each produced some sort of peace agreement and a new government. However, all of the agreements failed except for the recently

concluded Mpegati conference, which faces serious challenges. Why is making peace among Somali factions so difficult? Why, whenever they sign a new peace accord, do they fail to implement it?

Downs and Stedman, two leading scholars in this field, have identified eight determinants that affect the implementation of peace accords, namely "the number of warring parties; the lack of either a peace agreement before intervention or a coerced peace agreement; the likelihood of spoilers; a collapsed state; the number of soldiers; the presence of disposable natural resources; the presence of hostile neighbouring states or networks; and demands for secession".[15]

All eight factors, and others peculiar to this conflict, are present in the Somalia case. However, we will limit our discussion to the four most important factors: two external and two domestic. We argue that Ethiopia's meddling, the absence of a major-power interest, the warlords' determination to maintain the *status quo*, and lack of resources continue to haunt the Somali peace process.

The Ethiopian factor

Ethiopia's meddling is the most important and persistent factor in the perpetuation of the Somali conflict. This meddling has given shelter and arms to all spoilers (groups and individuals). It has undermined the two most important peace accords (Cairo Accord 1997, and Arta Agreement 2000) and has manipulated the Somali peace process in Kenya and the transitional government that was formed. Ethiopia has frequently sent weapons over the border and at times has occupied several towns in southern Somalia. In other words, Ethiopia, a powerful and well-positioned state, is a hostile neighbour that aims to maintain a weak and divided Somalia. A brief history of the relationship between the two countries and an analysis of Ethiopia's efforts to undermine peace-building efforts in Somalia will support our assertion.

Throughout history Somalis and Ethiopians (particularly Highlanders) have had unstable and poor relations. The two peoples have ethnic and religious differences. From the Somali people's perspective, Ethiopia is one of the colonial powers that partitioned Somalia into five parts. As Geshekter notes, Ethiopia's King Menelik wrote a circular in 1891 to the European forces that were dividing Africa among themselves and demanded his share. King Menelik wrote: "Ethiopia has been for fourteen centuries a Christian island in a sea of pagans. If the Powers at a distance come forward to partition Africa between them, I do not intend to remain an indifferent spectator."[16] The European powers gave the Somali region of Ogaden to King Menelik to appease him and in 1954 Britain gave Somalia's Hawd and Reserve Area to Ethiopia.[17] As a result, two major wars occurred in 1964 and 1977, and hundreds of skirmishes have taken place along the border between Ethiopia and Somalia. The source of the conflict was the Ogaden region, which is controlled by Ethiopia. Somalia has supported and armed opposition groups trying to overthrow Ethiopia's government, and Ethiopia has supported Somali opposition movements (SSDF, SNM, USC and SPM). All of

the opposition groups have started their wars from Ethiopia in order to fight against the military government of Siad Barre, and Ethiopia has been the major actor in perpetuating Somalia's civil war, particularly over the past fourteen years.

Ethiopia openly and effectively destroyed the Cairo Accord in 1997 and the Arta Peace Agreement in 2000. Twenty-eight Somali warlords and faction leaders agreed on a power-sharing formula in Cairo, Egypt, in 1997. They also decided to form a national government. At the time, Somalia's warlords and faction leaders were divided into two camps: the Ethiopian-supported Somali Salvation Alliance (consisting of fifteen factions called the Sodere Group or SSA) and the Somali National Alliance (SNA), which consisted of 13 factions and received limited support from Libya. Ali Mahdi Mohamed led the SSA, and Hussein Mohamed Aided was chairman of the SNA. These two groups controlled most of Somalia, and both participated in the Cairo Conference. In many cities, including Somalia's capital Mogadishu, the Somali people welcomed the Cairo Accord by holding rallies and demonstrations supporting it.

Ethiopia actively recruited two of the twenty-eight warlords that were meeting in Cairo. It encouraged Colonel Abdullahi Yusuf Ahmed (the current Somali president) and General Adan Abdullahi Nur to leave the meeting and reject its outcome. From Cairo they went directly to Addis Ababa. Ethiopia started to openly support these two faction leaders militarily and politically. Ethiopia and these two warlords effectively undermined Egypt's efforts to end Somalia's civil war.

Somalia slipped back into violence and a number of cities changed hands. The UN and Western governments showed no interest in intervening in the conflict, while Ethiopia became more openly involved: its army occupied some of the major cities in the southern Somalia. In addition, regardless of Security Council Resolution 733, adopted in January 1992, which imposed a comprehensive arms embargo against Somalia, many factions were receiving ammunition and sometimes direct military assistance from Ethiopia, for example the Rahanweyn Resistance Army (RRA) in Baidoa, the SNF in the Gedo region and the USC in Mogadishu and Hiraan.

Against this background, President Ismail Omar Gheulle of Djibouti developed a peace initiative in 1999. He made a speech at the UN General Assembly in September 1999 in which he outlined his plan for addressing the Somali conflict. Gheulle promised to hold a national reconciliation conference in which civil society and traditional leaders would participate. He asked the international community to support his initiative. If the warlords rejected his plan and stood in the way of peace, Gheulle proposed that the international community should consider them 'criminals'. He did give the warlords an opportunity to participate, provided that they respected the outcome of the conference.

As a result, the Djibouti (named after the city of Arta) Conference became the largest Somali-owned peace conference ever held, with more than 3,000 Somalis in attendance. Traditional leaders, civil

society organisations, intellectuals and businessmen came together to forgive one another and to establish a national government. The conference elected over 900 delegates, who later appointed a 245-seat Transitional National Assembly (TNA), whose members enacted the Transitional National Charter (TNC). The TNA elected a president, who then appointed a prime minister.

This open and transparent reconciliation conference received far more international and Somali support than the Cairo Conference. The regional organisation, the Intergovernmental Authority on Development (IGAD), endorsed it. Arab countries gave some financial assistance. The ARABSAT satellite played a positive role, as it broadcast conference proceedings to Somalia and the region through television and radio. The UN, the USA and the European Union (EU) also publicly supported the Djibouti initiative. Furthermore, more than three thousand Somalis, including some warlords, participated, whereas only twenty eight warlords and faction leaders had been invited to the Cairo Conference. The result of the conference was surprising. Somalis finally created a national caretaker government that was widely accepted and welcomed. Hundreds of thousands of Somalis throughout Somalia welcomed the outcome, with the exception of the self-declared breakaway region of Somaliland, which still had substantive issues with the rest of Somalia.

Even though Ethiopia had initially supported the conference and its prime minister attended the inauguration ceremony, it was reluctant to accept and support the outcome of the conference. After the TNA had elected Abdiqasim Salad Hassan and even before he had nominated a prime minister, Ethiopia convinced Colonel Hassan Mohamed Nur 'Shatigudud' of the RRA to abandon the TNG (Transitional National Government). Shatigudud and several other warlords had been sent to the Arta Conference by Ethiopia in the first place. He had received military assistance from Ethiopia in order to capture Baidoa from Hussein Aideed's SNA faction. Knowing what happened to the factions that directly opposed Ethiopia, he was not in a position to challenge it. Therefore, Shatigudud abandoned the TNG, going directly from New York as a member of the president's delegation to Addis Ababa. He subsequently became one of the staunchest opposition leaders against the TNG.

When Dr Ali Khalif Galaidh, the first prime minister of the TNG, formed his government in October 2000, Ethiopia's opposition to it became clear. Ethiopia publicly stated that the Arta process was not complete, and organised all the factions, regions and personalities that had opposed the Arta conference. Ethiopia also recruited some Arta participants who were not satisfied with the posts for which they were nominated, brought them together in the city of Awasa, and helped them create the SRRC. Bertrand Rosenthal of Agence France Presse (AFP) wrote: "By hosting a group of Somali warlords and other dissidents who this week joined forces in calling for the new regime in Mogadishu to be replaced, Ethiopia has once again shown itself to be a key player in Somalia's political turmoil."[18] Rosenthal noted: "With much of the population of its south-eastern Ogaden region being of Somali origin, Ethiopia is wary of advocates of a 'Greater Somalia' as well as of Islamic extremist groups."[19]

Moreover, the Ethiopian government started to openly send landmines, ammunition and weapons to groups that were opposing the TNG in Mogadishu, Lower Jubba, Bay and Bakool, Gedo and Hiran. Ethiopia also strengthened the Puntland regional state. The UN became concerned as Ethiopia's intimate involvement became clear. The Security Council passed a presidential statement condemning those countries that were sending weapons to Somalia and then demanded that all governments that were in breach of the resolution cease their activity. The Security Council's Expert Panel on Somalia also released a report, confirming that Ethiopia was sending weapons to Somalia regularly.[20]

Ethiopia started an international campaign against the TNG. After the 11 September 2001 attack on America, Ethiopia attempted to label TNG leaders as pro-Bin-Laden extremists and eventually succeeded in undermining the TNG, albeit other factors (internal fighting, corruption and lack of resources) contributed to its demise.

Whatever its motives, Ethiopia is an important actor in blocking peace-building efforts in Somalia. Since the beginning of the civil war Ethiopia has been playing with Somali factions: supporting one, destroying it and then supporting it again. This process of balancing factions has become very obvious over the past ten years. Hussein Aideed, who lost Baidoa because of Ethiopia, became its friend and spoiler in destroying the Arta Peace Agreement. Even more disturbingly, the Ethiopian regime has always helped any destabilising forces or actors in Somalia (particularly in the southern part). When Ali Mahdi was chosen to head an interim government in 1992, Ethiopia supported his main rival, General Aideed. When Aideed became stronger and created his own administration in 1994, Ethiopia supported Ali Mahdi and his groups. When all Somali groups signed the Cairo Accord, Ethiopia recruited Abdullahi Yusuf and Adan Abdullahi Nur. When Somalis formed the TNG, Ethiopia organised all the opposition, helped them create the SRRC (Somali Restoration and Reconciliation Committee) and provided military aid to subvert the TNG.

With respect to the peace conference in Kenya, Ethiopia initiated this peace process and has controlled it for two years with the help of Kenya; together they produced a charter, a parliament and a government of their design. When the heads of the Inter-Governmental Authority on Development (IGAD) member states met in Khartoum in 2001, Ethiopia pressured other IGAD countries and insisted that the Arta process was incomplete. Then Ethiopia forced a resolution calling for another peace conference in Kenya. At the beginning of this conference Ethiopia started to manipulate the peace process by controlling the agenda and forum. With the help of the host country Ethiopia gave absolute power to the warlords it supported. Ethiopia and Kenya have also marginalised traditional, religious and civil society leaders.

By keeping the Somali people divided and weak, the current regime in Addis Ababa believes it can eliminate any threat from Somalia. Moreover, Ethiopia intends to retain for many years the

Somali territories that it has colonised, and tries to gain unlimited access to Somali ports by signing agreements with the clan chiefs on unequal terms.

Warlords: determined spoilers

Warlords who are benefiting from the *status quo* lead most of Somalia's factions. Some have committed heinous crimes and therefore feel uncertain about their futures. These warlords have used violence and intimidation after peace accords were signed. For instance, General Morgan refused to accept a parliamentary seat and attacked Kismayo in 2001.[21] Muse Sudi, Hussein Aideed and Osman Ato used violence to undermine the TNG (Muse Sudi in 2001, Hussein Aideed and Osman Ato in 2001). Colonel Shatigudud and Colonel Abdullahi Yusuf also engaged in violence in their respective areas. The recent example of Mogadishu warlords' determination to undermine Ali Gedi's government illustrates better how Somalia's spoilers are committed to keep the status quo. Mahomed Qanyare, Muse Sudi, Omar Mohamud Finish, Botan Alin and Osman Hassan Ali Atto have done everything they can to undermine the transitional government, even though they remain members of the cabinet. In fact they attempted to create parallel administration in Mogadishu and they started to openly denounce Abdullahi Yusuf and Ali Gedi.

Somalia has had many internal spoilers. General Aideed, for example, challenged and effectively undermined the ill-fated UN efforts to restore peace in Somalia in 1993, despite wide support for the UN presence and activities. He wanted to nominate the agreed-upon Transitional National Council members in the areas he controlled, whereas the UN endorsed the local people's wish to elect their own representatives. The presence of internal spoilers[22] who are willing to use violence and intimidation, as well as a hostile neighbour determined to help or sponsor them, makes forging and implementing an agreement almost impossible.

Lack of resources

Besides Ethiopia and the warlords, the most important factor that has prolonged the conflict is a lack of resources. Menkhaus (1998) wrote: "It is not simply a lack of goodwill on the part of the factions that prevents implementation – it is a lack of capacity."[23] Somalia has never had an effective, self-sufficient government. Most of the state's resources have come from foreign aid, mainly as bilateral or multilateral assistance. The civil war has not only destroyed the internal domestic sources that generated an already insufficient income, but has made the whole country dependent on foreign aid and remittances. The Cairo Conference and the Arta peace process in Djibouti both had significant financial problems. To build peace in Somalia state institutions must be created, but doing so requires resources. For the first few decades, generating significant internal revenues such as those from taxes and fees will be out of the question, as most of Somalia's people are

refugees (some are in neighbouring countries, while most are displaced internally). To implement any peace accord, the international community and the Somalis, particularly those living overseas, must address this problem.

Absence of major-power interest

Winston Tubman, the UN Secretary-General's political representative to the Somali peace conference in Kenya, was quoted as saying: "One of the five permanent members of the UN Security Council – China, Britain, France, the US and Russia – could make a difference in Somalia … The African Union can be interested, the European Union can help, but what you need is some driving force (by a big power) in my experience."[24] Many experts on peace-building agree with Tubman's observation that Somalia has no friends internationally.[25]

During the Cold War, the US had strategic interests in Somalia. While ignoring its human rights record, the US deliberately supported the former military regime that led the country into this protracted civil war. Lyons and Samatar noted that "[f]rom 1983 to 1990, the US committed almost $500 million worth of military resources to Somalia".[26] The US also led an international intervention into Somalia in early 1992, when the combination of civil war and drought caused tens of thousands of deaths from starvation. However, after General Aideed's faction killed eighteen American troops and wounded another hundred, the US decided to withdraw from Somalia. Afterwards, the US position on Somalia was not clear, for it has adopted a 'wait and see' attitude.

Since the attacks on New York and Washington in 2001, the US has again shown an interest in Somalia. It has frozen the assets of the largest money transfer and telecommunication company (Al-Barakaat) in Somalia, even though an investigation by the National Commission on Terrorist Attacks upon the United States did not find evidence that linked this company to terrorist organisations.[27] The US has also listed about twenty Somali companies and individuals as 'terrorists'[28] and repeatedly said that it is interested in Somalia because of the war on terrorism. However, the Bush administration's actions and the statements are obviously contradictory. The US argues that without a functioning state, Somalia could become a breeding ground for terrorism, yet the US supports the forces that created and perpetuated the chaos in the first place.

The level of American commitment to helping create a stable regime in Somalia is not sufficient. Somalis widely believe that Ethiopia had a green light from Washington to spoil Somalia's peace efforts. Most Somalis believe that if the US commits itself to Somalia again, it will have an easier time than before for two reasons. First, most Somalis are tired of the senseless civil war. Warlords and faction leaders have failed to bring peace and development. Second, Ethiopia, which receives American assistance, is the most important factor that undermines peace-building efforts in

Somalia. US pressure on Ethiopia to stay out of Somalia's internal affairs would solve much of the problem. Overall, Ethiopia's hostile policies, the warlords' unwillingness to accept the popular will, lack of resources and the absence of major-power interest are major factors that have perpetuated the Somali conflict.

Strategies for comprehensive peace-building

Former UN Secretary-General Boutros Boutros-Ghali defined peace-building as the "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict".[29] He argues that processes of building peace require addressing the root causes of conflict. Ali and Mathews argue that a comprehensive peace-building strategy must include security, political arrangement, economic development and justice components.[30] Using Boutros-Ghali's definition as well as Ali and Mathew's framework, we will explain below how we think would-be peace builders could help to create a peaceful environment, build political institutions sensitive to the Somali condition, revitalise the economy, and deal with justice issues resulting from Somalia's civil war.

Creating a peaceful environment

Creating a peaceful environment is the prerequisite for the other components of peace-building. Two main sources of violence exist in Somalia. The first is political in nature. At the time of writing this piece the active civil war has subsided in most of the country. The northern part has established peace and has a functioning administration that intends to secede from the rest of the country. Somaliland and the Puntland regions have clashed several times over the ownership of Sool and Sanaag Bari provinces. There have also been instances of fighting in the Jubba Valley, Bay, Bakool and Banadir regions. Both internal and external actors, with different intentions, were involved in these conflicts. Ending this type of violence requires political solutions.

The criminal activities of freelance militias constitute the second source in insecurity. After the civil war many irresponsible militias obtained all kinds of weapons which are now used to commit criminal offences against civilians, including murder, robbery, rape and kidnapping. The politically motivated and purely criminal sources of insecurity should be separated. Perhaps local security guards, the shari'a courts, the business groups and the elders could deal with the criminal activities if these groups were encouraged and supported. Certain clans established their own shari'a courts for security reasons. These courts were effective in curbing the violence in Mogadishu and its surrounding regions, but Ethiopia and its warlords succeeded in labelling the members of these courts as 'radical fundamentalists' and are determined to dismantle them without providing an alternative security system. Regardless of the system used, we strongly

believe that ending the impunity with which criminal gangs operate is necessary if security is to be established.

Disarmament of groups that control the weapons is also important if security is to be established. But one must be clear about the types of weapons that have to be collected. There are heavy and light guns. We believe that it is not practical to collect all the light weapons from the Somali people. However, the heavy weapons have to be collected and placed under the control of the transitional government. As far as we know, there are three groups that are armed with heavy weapons.

 The warlords constitute the first group. This group's motive in stockpiling and using these weapons is to achieve political power. Most, if not all, of the warlords are members of the current transitional government that was established in Nairobi. In fact, most of them are in the cabinet. Therefore, warlords are expected to voluntarily give up their weapons since they have achieved their goal. Unfortunately, this is not happening at all; Somalia's warlords are rearming themselves even after they became cabinet ministers.

The second group that have amassed a significant amount of heavy weapons are the Somali merchants, who have heavy weapons in order to protect their properties and businesses. Although they are one of the groups that have been marginalised from playing a role in the Kenyan-hosted peace process, they are expected to cooperate if their businesses and properties are protected.

Finally, the local security groups and shari'a courts control a significant number of the heavy weapons in the country. They have collected these weapons in order to provide the security services that no one else supplies. These local security forces and shari'a courts were not invited to the peace conference in Kenya. Therefore, the transitional government must negotiate with these groups like other stakeholders, such as the business community and the warlords, and address their political and security concerns.

With respect to international forces, we believe that using international peacekeeping forces to monitor and train the Somalis during the implementation period would be necessary to build the confidence of the various groups. These forces must not include Somalia's neighbours, however, as these countries have vested interests in the conflict.

President Abdullahi Yusuf has asked for a 20,000-strong African peace enforcement force (including units from Somalia's neighbours).[31] We have reservations about the utility of bringing in African forces, including Ethiopian and Kenyan troops. First, all of the warlords are officially in the government and parliament, and they control most of the weapons. If the warlords cooperate, a peaceful environment can be created with little outside support. Moreover, the AU has limited capacity; right now the UN Secretary-General is actively lobbying to replace the African forces

in Darfur with international peacekeeping forces because of capacity-related problems.[32] Besides, there are questions of neutrality, particularly with Ethiopia and Kenya. Many Somalis believe that allowing Ethiopian and Kenyan armies into Somalia would exacerbate the whole problem.

Political institutions

Abuse of power is one of the major causes of the Somali conflict. Therefore, designing political arrangements that could regulate the exercise of power is crucial for building a durable peace. Since a one-person, one-vote democratic governance is not practical at this time, any meaningful peace agreement in Somalia must include an acceptable power-sharing formula for the various clans. Power sharing, according to Sisk, refers to "the practices and institutions that result in broad-based governing coalitions generally inclusive of all major ethnic groups in society".[33]

The Somali case is complex, as Somalia has no clear-cut 'government' and 'opposition' parties. Moreover, there are no disciplined and organised political parties. Instead, there are clan-based political factions that are owned by their leaders. Some clans have factions while others do not. Moreover, as stated earlier, clan identity is fluid. The challenging question then is what political institutions would accommodate these contradictions. Warlords have repeatedly shown that they are not interested in sharing power among themselves or with other stakeholders. On the other hand, traditional leaders and civil society groups have proved that they can compromise. However, most of them do not have real power. Foreign-backed warlords control the militia groups and most of the weapons. They also have their own factions that include only those who support them within the clan.

During the transitional period, a clan-based formula would be more appropriate for governing Somalia than a faction-based formula. Former democratic and military leaders have always practised some form of balancing act among the clans in Somalia. Moreover, since clan identity is strong among Somalis, the way they perceive representation is important. Our observation reveals that most Somalis feel 'represented' when a member of their clan is included in the decision-making process. The Somali collective punishment/reward culture reinforces this perception. Therefore, the most appropriate way to enlist the support of the general public and create a broad-based government is to use clan representation.

However, using the clan system as a basic unit comes with its own challenges. The fluid nature of Somalia's clan system does not produce stable clan parties. The last two reconciliation conferences (Arta and Mpegati conferences) endorsed a parliamentary system. There seems to be a mismatch here between the system that was adopted and the realities on the ground: parliamentary systems require some form of organised and disciplined political parties and the Somali context does not provide this, at least not yet. As a result, during the period of the TNG (2000-2004) there were three

prime ministers. Former president Abdiqasim Salat Hassan could easily manipulate the parliament to obtain the results he wanted. The current Transitional Federal Government (TFG) faces similar challenges. If the parliament meets, Prime Minister Ali Gedi might lose a confidence vote. The same will be true of any government that meets under the current arrangements.

Peace processes that produce transitional governments and the appropriateness of the endorsed governance models for the Somali context have to be revisited. For a peace process to produce a legitimate and broad-based government, the Somali people must first own the process. Somalia's hostile neighbours manipulated the Mpegati Conference to the extent that they marginalised the Somali people completely. We also recommend the establishment of a bicameral system in which traditional leaders and religious scholars are given a formal role in the management of society. We think there is a need for an independent executive (presidential or prime ministerial) with the stability to govern.

Somaliland and Puntland are good examples of how such a system could work in Somalia. In both cases the clan system has been used, and the traditional leaders play a significant role in creating and maintaining both administrations. The executive branches of these administrations have enjoyed some stability during the period they have been in office. These administrations are not ideal governance systems at all, but as far as we know there is no other practical alternative system that can address the representation and governance issues, at least for now.

In addition, Somali groups have often endorsed the federal model as an appropriate system for governing the country because of outside pressure. From the first reconciliation conference in 1992 to the one in Kenya, they agreed to establish an undefined form of federal system. We believe federalism does not address the Somali conflict, as almost all of the conditions that necessitate federation are absent from the Somali context.[34] Instead, we think a modified form of the consociation model or a decentralised unitary state model (where the central government determines the powers of the regions and districts) is more suitable for the Somali context than the proposed federal system.

According to Lijphart, a consociational approach is a group building block which relies on four principles. It encourages building grand coalitions; it protects minorities by providing a minority veto; it guarantees the representation of all groups by employing proportional representation; and it provides segmental autonomy, particularly if there are religious or language segments.[35] Lijphart, who is considered the pioneer of this model, identified nine favourable conditions that, if they exist on the ground, would help the consociational model succeed. These are the absence of a majority group; segments of equal size; small number of segments; small population; external threat; overarching loyalties; tradition of elite accommodation; socio-economic equality; and geographical concentration of segments.[36]

We think a thorough debate in all levels of society is necessary before any of the above systems could be prescribed. A few self-appointed politicians and neighbouring countries, with their own interests, should not decide this fundamental question.

Justice issues

Most of the Somali reconciliation conferences avoided the question of how Somalis should deal with their past. We believe this issue is important because it affects people's trust and confidence in the government. How can one trust the same leaders who have committed heinous crimes as leaders of the nation? Other countries that have experienced a civil war or major change have approached this question differently, using one of two general approaches: amnesty or punishment. Amnesty ranges from giving blanket amnesty to those who are alleged to have committed human rights violations to the creation of some form of truth and reconciliation commission. Punishment may also vary in degree. Some countries have prosecuted and punished alleged criminals harshly, while others have only limited their political rights.[37]

If Somali elders, religious scholars, intellectuals and genuine leaders come together and debate this issue, we believe that they can agree on a formula that will accommodate the security demands of the newly created weak institutions and the rights of the victims of past atrocities. There is no simple solution. We believe that a balanced combination of these approaches may produce an acceptable agreement on the question of dealing with the past. Some of the warlords may have to be prosecuted, while many other leaders would have to be lustrated (limiting political participation). A general amnesty among the public may also be encouraged.

Economic development

The capacities of the country and its people are limited for the present time. Most Somalis are displaced internally or are refugees outside the country. The civil war has destroyed much of the domestic sources of revenue. In addition, the scarcity of Somalia's resources is one of the driving forces of the conflict, as different groups compete for these limited resources. Therefore, Somalis cannot be expected to recover from this long civil war by themselves. We believe the international community has a major role to play in helping to redevelop Somalia's economy and institutions.

First of all, implementing any agreement among Somalia's groups would cost a huge sum of money: the reconstruction of state institutions; the disarmament, demobilisation and reintegration of the militia groups; the return of refugees and others would require significant and timely assistance from the international community. One reason that the Arta TNG failed was its lack of resources. The TNG leaders became vulnerable to the abuses of businessmen who had their own agenda. We believe that timely and sustained outside assistance is crucial for Somalia's peace-building efforts.

The role of Islam-informed peace education in Somalia's peace-building

As a result of the civil war, *de facto* clan borders exist all over Somalia. After safety became dependent on clan membership, people moved to areas where they thought they would be safest. Creating a secure environment, establishing the appropriate political institutions, addressing justice-related issues and revitalising economic development are necessary but not sufficient to rebuild trust and confidence among Somali groups and individuals. The current *de facto* clan borders will help create and maintain stereotypes and prejudices between clans. In this context, Islam-informed peace education programmes become necessary.

Since the overwhelming majority of Somalis are Muslims, any peace education efforts should draw upon Islam, which revolves around peace. According to the teachings of Islam, a Muslim consciously submits to the will of God and subsequently gains internal and external harmony, synchronicity and peace. 'Internal peace' refers to one's psychological wellbeing as a result of lack of conflict within the self, while 'external peace' stems from a harmonious and loving relationship with God as well as the social, physical and spiritual environment.[38]

Islam-informed peace education would stress the kinds of values and behaviours that would unite the Somalis as Muslims in a bond of brotherhood, mutual love, sympathy, help, care and fellow-feeling. These are some of the important social rights among Muslims. Being a Muslim thus obliges one to avoid transgressing boundaries and infringing on the rights of the self and others.[39]

Islam-informed peace education would also aim at eradicating *Thulm* (oppression or aggression). As the above analyses indicate, Somalis have failed to respect the above unifying Islamic values, and the rights of fellow Somalis have been violated. Social values and behaviours that damage Muslim social unity include fighting, unlawful competition for resources and power, mutual envy, jealousy, suspicion, stereotyping, spying, hostility, oppression, hatred, humiliation, despising, prejudice, discrimination, exploitation and abuse.[40]

Any peace-building efforts that attempt to address the Somali conflict should draw upon Islamic teachings. Islam provides one of the identities that unify Somali clans. It also has conflict-resolution mechanisms that resonate with the conflicting parties. Abu-Nimer identified 17 Islamic values that can be used for peace education programmes, including the pursuit of justice, social empowerment by doing good *(Ihsan)*, the universality of dignity and humanity, equality, sacredness of human life, a quest for peace (peacemaking), knowledge and reason, creativity and innovation, forgiveness, importance of deeds and actions, involvement through individual responsibility, patience *(Sabar)*, collaborative actions and solidarity, the concept of *Ummah*, inclusivity and participatory processes, as well as pluralism and diversity.[41] The concept of *Ummah* refers to the world-wide community of Muslims; it transcends tribe, race, ethnicity, nationality, and class.

Somali culture and literature can offer useful tools and techniques for attaining and sustaining peace. For instance, Somalia's poet and composer Mohamed I Warsame 'Hadrawi' launched his peace caravan on 1 July 2003. Hadrawi told the Somali media that he wanted to travel to as many cities and towns as he could. He stressed that he would like to share a message of peace with his people, regardless of the part of the country in which they are living.[42] Hadrawi is known for his bravery and principled position against the former military regime. He was imprisoned for composing poems and plays that criticised former military leaders.

Hadrawi's peace caravan came at a time that the Somali conflict was 'ripe for resolution'.[43] He employed relevant and homegrown values and delivered his message through poems and speeches.[44] The peace caravan had all the necessary features because it addressed the important issues that Somalis face in a way that did not provoke or invite violence. Building on the strengths of the peace caravan is important. Hadrawi has shown that if the content and the pedagogy of peace education programmes are consistent with Islamic values and Somali culture, these programmes will succeed. This lesson is very important, because the perceptions of local groups are crucial. In addition, as anthropologists and historians have documented, Somalis put a high value on literature, particularly poems. The Somali people have been called "the nation of poets".[45] Literature has been an important tool in Somalia for wars of liberation and for peace activists. Using literature as the pedagogy of peace is helpful in changing the Somali people's attitudes and behaviours. Finally, we believe that peace education programmes promoting Islamic values such as tolerance, respect, care and empathy that employ an appropriate pedagogy might produce positive results.

Conclusion

In the first section of this article we outlined the background causes of the Somali conflict. We argued that competition for power and resources, the colonial legacy and state repression were the long-term causes of the Somali conflict. We also noted that clan identity, the availability of weapons and the presence of unemployed youth have exacerbated the civil war. While we recognised the importance of clan identity within Somali society, we argued that the politicisation of this identity is merely a guise for the elites' pursuit of power and economic interests.

In the second part we identified the main factors that have sustained the conflict for 14 years. We argued that Ethiopia's hostile policy toward Somalia, the warlords' lack of interest in peace, Somalia's meagre resources and the absence of major-power interest are the major factors that have plagued peace efforts in Somalia.

In the final section we proposed peace-building strategies that we thought would help the search for peace. To end politically motivated clan skirmishes and organised crime we suggested that

using homegrown values and employing the assistance of all types of forces including international peacekeeping forces, local militia groups, shari'a courts and traditional leaders would help create a secure environment. For the area of political institutions we posited that a clan-based power-sharing formula would produce a broad-based legitimate regime in Somalia. But we questioned whether the often-endorsed parliamentary system can produce a stable regime. To address justice issues we suggested that a combination of strategies is necessary to deal with past human rights atrocities. Since this important issue has been neglected, we advocate that it should be addressed formally in peacemaking processes. We also suggested that timely economic assistance should be provided when various groups sign a new peace accord.

Finally, we examined the roles that Islam and education can play in confidence-building measures. Somalis are fortunate to have a unifying identity that can be emphasised, and that has its own conflict-resolution mechanisms. Using Hadrawi's recent peace caravan as an example, we suggested that appropriate peace education programmes should be designed and delivered formally and informally.

We believe that Somalia's protracted conflict has multiple and complex causes. The combination of external intervention, the elites' greed and the people's legitimate grievances resulted in an all-out war. Since the synergy of factors and actors we have identified in this paper are too numerous, we believe that comprehensive strategies that deal with all of them at different stages are necessary for creating a durable peace in Somalia. We believe that most Somalis realise they share a common destiny. Moreover, the reality of hostile ethnic politics in the Horn of Africa region – a common religion, language, culture and identity, and the presence of an external enemy that is determined to exploit their weaknesses – has convinced the Somali people that ending the protracted conflict and creating a united and strong Somali government is necessary for their survival in that part of the world. Further research is needed in order to provide policymakers and stakeholders with practical suggestions for addressing these problems.

Notes

1 I M Lewis, *Modern history of the Somali: Revised, updated & expanded,* Ohio University Press, 2002, pp 1–18**.** See also John Markakis, *Resource conflict in the Horn of Africa,* Sage, London, 1998 (Introduction and Part II, Ethnic and clan movements section). Lee V Cassanelli, Somali land resource issues in historical perspective, in Walter Clarke and Jeffrey Herbst, *Learning from Somalia: The lessons of armed humanitarian intervention*, Westview Press, 1997, pp 67–77.

2 Mohamed Jama Urdoh (07/09/1967), *Al-Yoom Newspaper*, 20, Mogadishu, Somalia. (The author of the report published the names, clans and districts for which these officers were responsible.)

3 See Markakis, op cit (Introduction)**.**

4 See Africa Watch, A government at war with its own people: Somalia, The Africa Watch Committee, 1990, p 10.

5 Ibid.

6 James D Fearon and David D Laitin, Ethnicization of civil wars as a problem for an international gendarmerie.

Research Proposal to Carnegie Corporation of New York, p 4, <www.stanford.edu/group/ethnic/Carnegsite.doc> (2 January 2004).

7 Charles Geshekter, Anti-colonialism and class formation: The eastern Horn of Africa before 1950, *International Journal of Historical African Studies* 18(1), 1985, pp 1–32.

8 Mohamed Ibrahim Warsame 'Hadrawi', Interview with *Himilo Somali Newspaper* (vol 1), Himilo Publishing, Toronto, January 1995, pp 18–22.

9 Louis Kriesberg, *Constructive conflicts: From escalation to resolution*. Rowman and Littlefield, New York, 1998, p 39.

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AFRICA WATCH

Africa in 2006:
The humanitarian hangover?

Mariam Jooma⋆

Another year, another appeal. Or so it would seem for humanitarian workers, development agencies and NGOs working in Africa who have come to know the steady routine of annual appeals based on 'needs assessments' undertaken in numerous countries around the continent. From Niamey to Lilongwe 2005 saw its fair share of 'emergencies', including a famine in Niger and food shortages in the Great Lakes region and large parts of Southern Africa.

The current drought gripping the Horn of Africa is being described as the worst in 40 years and the cause of numerous violent clashes between sub-clans of pastoralists on the border areas of Somalia, Ethiopia and northern Kenya. These developments continue despite the high mark of optimism in

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2005 which was meant to be 'Africa's year' for poverty reduction, particularly emphasised by the UK's chairmanship of the G8 and Tony Blair's Commission for Africa. However, it is becoming increasingly evident that humanitarian issues affecting Africa are slipping off the international radar and are competing with major natural disasters around the globe. More and more it is geo-political brinkmanship in relation to the global war on terror and access to resources that defines engagement with the continent. Certainly, the 'war on terror' and its antecedents have meant that resources are now more tightly geared towards a hard security imperative. Making poverty history, it would seem, is just not sexy enough.

The fact that LiveAid 2005 marked 20 years since the Band Aid concert of 1985 with largely the same underlying theme – 'Africa in crisis' – brought into sharp relief what some like Alex de Waal have called the continuation of 'disaster pornography' – the use of crude imagery of Africans in dire poverty devoid of agency to raise funds for immediate assistance. No other country of the world is more synonymous with hunger in the popular mind than Ethiopia, and it is for this reason that the current drought affecting the Horn of Africa might be met with donor fatigue.

The question of food security nevertheless goes to the heart of issues surrounding chronic poverty and underdevelopment. At the time of writing an estimated 11 million people in East Africa and the Horn of Africa are facing critical food shortages owing to a prolonged drought – some 1.75 million people in southern Ethiopia's Somali and Oromiya regions alone. Experts predict that the coming rains will be insufficient.

The food debate is not a new one. From the 1970s development theory of agricultural underproduction to Amartya Sen's more nuanced appreciation of the gaps between production and access to food, the new millennium feels all too familiar for large parts of the continent. Seen in the larger context, food security in the Horn resonates not only with the compromise of human dignity of individuals, but also with a severe collapse of social capacity that is likely to destabilise political institutions.

So, while the current flash appeals for aid will make the headlines, it is the longer-term structural violence of poverty that undermines the 'democratisation' project. Out of more than 850 million chronically hungry people globally, an estimated 10 million will die every year of hunger – this accounts for more than tuberculosis, malaria, and HIV/AIDS combined.

According to Stephen Devereux of the University of Sussex, mass starvation is only one result of famine. Others include a drop in fertility, economic destitution, community breakdown, distress migration, and outbreaks of disease.[1]

Increasingly the various factors underlying the creation, maintenance and attempts at alleviating famine and hunger must be viewed in the context of an enlarged paradigm of 'security'. The term

'human security' has gained currency over the past decade as analysts and development workers alike attempt to situate the seeming chaos of 'humanitarian' crises within the broader notion of political rights and freedom. Certainly the first main element to human security is that the traditional primary actor – the security of the state in military terms – is no longer the ultimate end. Rather it is the multi-dimensional freedom of the people that will determine the stability of political framework in the longer term. 'Freedom from want' is therefore intimately linked to 'freedom from fear'. The relegation of issues surrounding hunger, famine and drought to 'humanitarian' agency delinks those phenomena from broader debates of weak governance and in large measure denies that food insecurity is influenced by political developments.

Nature pleads not guilty – again

But does Africa have a monopoly on drought and food shortages? A recent discussion on the BBC website pitted two analysts against each other on the food crisis issue, with interesting results. The one emphasised broader factors such as global climate change, civil war, unfair trade and health issues such as HIV/AIDS. The respondent placed the blame for food crises squarely on the political 'powerlessness' of African citizens to determine their own future. It is argued here that the factors underlying deprivation and hunger are multi-faced and include interdependency and political powerlessness.[2] "Once an emergency is identified, the NGO's public relations machine takes over and there is a terrible temptation to look around for the very worst stories," says Tony Vaux, former Oxfam official.[3]

Indeed, even the concept of food aid has been questioned by development theorists, who see it as long-term damage to the mitigation of a natural disaster, rather than just the immediate benefit. Many would argue that the distorting impact of food aid on local markets points to the underlying vulnerability of communities to market mechanisms. Aid in the form of food also indirectly encourages weak policies, as has been the case in Ethiopia where farmers are not allowed to own land. Thus, governments appeal for aid instead of dealing with the situation on a political institutional level.

Moreover, there is no simple cause-and-effect link between drought and famine. A report by a group of international meteorologists in the 1970s entitled Nature pleads not guilty emphasised that Africa did not have the monopoly on drought – what was needed was an examination of policies that contribute to the overall vulnerability of populations in the face of changing weather patterns and resource reserves. This was powerfully expressed when the report argues: "In 1976 there was also a drought in Britain. We believe that nobody would have thought it 'natural' for thousands of British children to die because of the drought. The loss of even a few dozen children would have been nothing less than a scandal."[4]

A striking piece of information relating to the vulnerability of marginalised communities in Africa is that of the 20 most severe famines of the 20th century, none occurred in Africa. How then did Africa become the poster-child for media depictions of hunger? A focus on the underlying causes of vulnerability, such as the reduction of 'networks of affection' that are linked to macro-economic adjustments, the impact of an urban bias for access to services, increasing desertification of land, and the effect of HIV/AIDS on the agricultural labour force are all part of the dynamic mix of factors affecting local communities.

Defining vulnerability

Before looking at the issue of vulnerability it is important to consider the common-sense linkages between resource scarcity and conflict. Eruptions of violence as recently seen between the members of the Marehan and Majerteen factions of Somalia's Darod clan are explained using the resource scarcity paradigm. However, as Clover suggests, it is perhaps more revealing for policy-makers to turn their attention to the fragmentation of social networks that underpin vulnerability to environmental change. As Clover argues:

> [T]he emphasis also needs to shift away from focusing on conflict as an outcome of resource scarcity. The focus should be on the prevention of resource scarcity, and being more concerned about social disruptions than about violent conflict as the principal sources of insecurity. This calls for the urgent need for mitigation against the causes, and management of environmental insecurities arising from threats such as degradation and climate change.[5]

So what is vulnerability? This question is thoughtfully considered by Yamin, Rahman and Huq in their conceptual overview of vulnerability and climate change in a recent article in the *International Development Studies Bulletin*.[6] Their commentary also draws on the astute arguments put forward in 1989 by Robert Chambers who highlighted the need for a distinction between the terms 'vulnerable' and 'poor'. He explained that 'vulnerable' and 'vulnerability' are common terms in development, but their use is often vague and these terms are often use as convenient substitutes for 'poor' and 'poverty'. Instead Chambers defined poverty as "deprivation, lack or want" while 'vulnerability' is understood as "defencelessness, insecurity and exposure to risk, shocks and stress". The NGO ActionAid, for example, defines vulnerability as the factors that drive people into poverty and "block their exit routes from poverty".[7]

Certainly, this view offers a more nuanced perspective on the various factors influencing the 'poverty trap', including social exclusion based on gender, geography and education. It is also important to factor in the various forms of vulnerability that are evident outside of natural 'hazards'. As Yamin,

Rahman and Huq explain: understanding vulnerability should deepen our understanding of the climatic, social, generational, geographic, economic and political processes that generate poverty particularly chronic poverty.[8] Certainly the need for environmental considerations in the drawing up of poverty reduction strategies for fragile states would go some way to linking policy and a constantly changing human security landscape.

At the time of writing the H5N1 avian flu virus is dominating the headlines – a phenomenon that will most certainly affect the most vulnerable of communities considering that poultry provides the most inexpensive form of protein for the poor, and is likely to impact upon livelihood strategies in the longer term. It is clear that in 2006 political will, responsive institutional frameworks and flexible mechanisms will be critical to addressing the long-term vulnerability that underpins chronic food insecurity.

Notes

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Zimbabwe's Movement for Democratic Change: Do weak systems lead to weak parties?

Chris Maroleng*

Observers of Zimbabwean politics have often pointed out that the current dilemma that the country faces is a result partly of the dysfunctional transition from colonial rule to independence and partly of the failure of the ruling Zimbabwe African National Union-PF (ZANU-PF) to transform itself into a party capable of democratic government. Both these lines of argument explain the Zimbabwean situation, in particular the narrowing of democratic space that we have witnessed in recent times and the use of violence to resolve what are essentially political problems. In other words, Zimbabwe's multifaceted crisis is the result of failures of leadership and the political party system. In this regard, common sense dictates that in order to create functional political systems, the various elements that form the totality of this system should be composed to a large degree of

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institutions and political parties that guarantee the accountability of the leadership to the electorate, as well as respect for, and protection of, fundamental human rights, and respect for the constitution and rule through just law. Unfortunately these key ingredients that are required to achieve good governance have been ominously missing from the practice of politics in Zimbabwe for quite some time. Zimbabwe's crisis of governance and the recent fractionalisation that has emerged in the Movement for Democratic Change (MDC) can therefore be located within the context of dysfunctional political parties as well as ideological and strategic deficiencies that continue to plague the country's body politic.

The recent power struggles in the two main political formations in Zimbabwe can be explained, in part, by the godlike influence wielded by their leaders. In fact, to many outside observers ZANU-PF appears to be organised like a 'political mafia' in which the toughest persons prevail, which inevitably results in an 'infallible leader' or 'big man' syndrome.

Therefore, to many of the Zimbabweans who supported the MDC, this relatively young party represented a refreshingly different leadership model from that of ZANU-PF and a viable break with the previous political leadership styles that had reflected tendencies towards autocratic and even dictatorial rule.

However, the recent actions of the top leaders of the MDC have now raised the questions of whether the opposition, which promised so much in the beginning, is any different from the governing political party that it seeks to unseat and, more importantly, whether the MDC has the depth of leadership to present a true alternative to the mafia-like political formations that Zimbabwe has seen to date. The recent machinations of some of the leaders of Zimbabwe's fledgling opposition at first glance might seem to confirm these concerns, but before we consider these questions, let us turn our attention for a moment to how the MDC deck of cards fell apart.

In a previous paper that was written before the division in the MDC became apparent to most people, this author warned of the budding cleavages that were emerging within the main opposition political party. That is why it is appropriate to revisit what at the time were considered the main challenges that could lead to the fragmentation that is currently shaping developments and the balance of power in the MDC. In that paper, the author stressed that, "[a]s a political party, the MDC was created by a coalition of civic groups that were united more by distaste for Mugabe and ZANU-PF than by any unity of political programmes".[1] It can be argued that the MDC came into being because the unifying vision of the liberation struggle had broken down, and the 'democratic deficit' and the failing economic environment had emerged as major challenges to the actual experience of liberation.

It was therefore apparent even before the recent discord in the opposition camp came to a head that the MDC might struggle to keep these different social forces unified under its leadership, and that

it might, in future, become divided on ideological grounds and fundamental differences in policy. Some observers point out that "it was the MDC's belief that the issues of ideology and participation would be negotiated once Mugabe's regime had been dislodged from power".[2] Even though the party has done much to avert clashes of interests between the moderates and the militants, the leftists and the conservatives, the young and the old within its rank, judging by the current rifts in the party, the MDC has not been successful in defining a unifying set of values (both inspirational and strategic) that will keep the bond intact before it is consumed by the 'struggle within the struggle'.[3]

One view of the MDC's current position is that it is divided, strategically and ideologically, into two broad constituencies, which, for the purposes of this article, are termed 'militants' and 'moderates'.[4] This division can be traced to the period immediately after the MDC's failure to oust the ruling party at the presidential polls in the March 2002 elections. The militants (represented by the president of the MDC, Morgan Tsvangirai) in the opposition advocated a strategy that would see the party spearheading a mass uprising against the ZANU-PF's Mugabe-led regime. The arguments in favour of this strategy were that it would exert more political pressure for change on ZANU–PF than it could resist, or that this pressure would result in a radical change of regime in favour of the opposition. The moderates (led by the secretary-general of the MDC, Welshman Ncube), on the other hand, favoured a strategy of pushing for talks with ZANU-PF that would, they hoped, eventually lead to a negotiated settlement between the two principal parties and usher in an end to the political impasse in Zimbabwe. This moderate perspective was based on the view that the Zimbabwe crisis is basically one of political illegitimacy. It was argued at the time that once this key issue was addressed through negotiations, other factors relating to governance, economic reform and the humanitarian crisis would be resolved as the widening polarisation and tension between the MDC and the ZANU-PF were bridged. The MDC's parliamentary caucus, which is strongly influenced by the Ncube faction, also encouraged participation by retaining their seats in parliament, claiming that as members of parliament they at least had been able to give voice to some opposition against government policy.

The divisions in the opposition really came to the fore in the middle of October 2005 when Morgan Tsvangirai overruled a national council decision, arrived at by a slim 33 to 31 margin, which voted in a secret ballot to participate in the 26 November senate election. Tsvangirai based his veto on the belief that an upper house was an unnecessary drain on taxpayers and would do nothing to improve the lives of ordinary Zimbabweans, and on the fact that the MDC had opposed the constitutional amendment that created the senate during the parliamentary debate on the issue.

Not surprisingly, the president's attempt to overrule the national council decision was viewed as undemocratic by his critics and intra-party rivals, led by Welshman Ncube and the deputy president Gibson Sibanda. They argued that the national council was the supreme decision-making body between congresses and that Tsvangirai did not have the authority to act contrary to its decision.

In refusing to comply with the decision of the national council, in one fell swoop the leader of the opposition seemed to turn his back on the founding democratic principles of the MDC, which expressed a desire for accountable political leadership, with limited powers vested in any individual, and for a leadership that cannot defy the law with impunity. The autocratic strategy adopted by Tsvangirai was the final straw that prompted the moderate group led by Ncube to form their own breakaway faction, which has come to be known as the 'pro-senate faction' of the MDC.

Even before the divisive question surrounding participation in the senate polls emerged, the president of the MDC had shown growing tendencies towards appropriating more power than he is entitled to. In fact, since October 2004, there has been a growing aspect of 'mafia-like' behaviour within the MDC, with Morgan Tsvangirai failing to condemn intra-party violence against certain members of his own leadership. In the wake of the 2005 elections, this violence escalated, with several senior MDC office-bearers being physically assaulted by MDC youths inside MDC party headquarters. Two officials suffered serious physical injury as a result of these violent attacks. The decision of the national council to dismiss these youths (who are facing criminal charges) was subverted by the president of the MDC; a few days after their dismissal he insisted on re-employing them as his bodyguards. When there was a call for a further internal inquiry into the violence, Tsvangirai tried to sack his fellow top five officials.[5] It was pointed out that this was unconstitutional – that the president did not have the sole power to dismiss his senior colleagues – and the dismissals did not take effect.

The pressures, both internal and external, being brought to bear on the MDC have now raised the question of whether the MDC can continue to act as an effective umbrella body for the other civil society groups in Zimbabwe that are calling for democratic reform. This factionalism in Zimbabwe's main opposition party has also served to further highlight the failure and weaknesses of this country's dysfunctional political party system. The seeming lack of effective leadership and the growing fault lines within the MDC may engender damaging 'struggles within the struggle'. Because the MDC was formed in a very inclusive and extensively consultative manner, there are many constituencies that have an interest in determining the course it will take in its daunting task of unseating the ruling party.

With the advantage of hindsight it can probably be said that it was inevitable from the beginning that these various constituencies would clash on ideological lines or policy. In fact, history teaches us that where several groups or even individuals are engaged in a struggle against a common enemy, there is bound to be a power struggle among them at some point. The MDC, judging by the recent polarisation in this party, is no exception to this principle of human and organisational dynamics.

The current situation in which the MDC finds itself could result in two possible scenarios. The first is that this is a temporary setback for the MDC, which will eventually be resolved by the

reunification of the rival factions; or, second – and the most likely scenario of the two that will be presented here – that we are now in a period that will usher in the final and irreversible implosion of the MDC as we have come to know it. It will be argued here that this scenario will result in the creation of two separate political formations, which for all intents and purposes will be very similar in ideology and policy orientation to the MDC of the past. The individuals who constitute the leaders may be different, but other than that very little will change, except for the leaders to allow for the effective differentiation of these two new political forces. What is also very likely is that the high levels of support that the old MDC enjoyed will be split between the two formations, resulting in the overall strength of the opposition diminishing, as a direct consequence of these divisions in the opposition camp. The anticipated bickering over the ownership of the MDC brand name by these disparate forces that will probably result in protracted court cases will also have an adverse effect on their credibility.

If these assumptions are correct, the failure of the new opposition groupings to address the structural challenges relating to ideology and strategy that hampered developments in the old MDC, combined with the failure to evolve away from the dysfunctional political party system that has affected all the political parties in Zimbabwe's past and present, will yield negative outcomes for these new groupings in the long term. These strategic lapses that have been briefly considered above will result in these new political formations presenting 'new leaders' (who may also succumb to Zimbabwe's big man syndrome) and placing them in political organisations that suffer from deficiencies in both policy and ideology. This leads us to the conclusion that in Zimbabwe's case the weak political system has led to the creation of weak political parties. One can only hope that new political forces will learn the lessons contained in this country's chequered political history.

Notes

1 C Maroleng, Zimbabwe's Movement for Democratic Change: Briefing notes, ISS Situation Report, 3 May 2004, p 2.
2 Maroleng, op cit, p 3.
3 S Sithole, Avoid secret political deals, *Financial Gazette*, 11 March 2004. In this article the author points out that where there are several organisations or even individuals engaged in a struggle against a common enemy, there is bound to be a power struggle among them. This warning is particularly targeted at the MDC. The author borrows the concept of the 'struggle within the struggle' from the late Professor Masipula Sithole's classic work *Zimbabwe: Struggles within the struggle*, published in 1999 by Rujeko Publishers in Harare.
4 Maroleng, op cit, p 3.
5 S Eppel, Taking a principled stand on the MDC crisis, *Zimbabwe Standard*, 16 November 2005.

Benin: Under new management

Richard Cornwell★

In the middle of the 1970s there were few observers who would have predicted that Benin would come to provide Africa with examples of peaceful political transition. Benin's ethno-regionally fractured polity traditionally has pitched the south-east, south-west and north of the country into a bitter rivalry for national political power. Throughout the 1960s the army had frequently intervened to break the political deadlock created by civilian administrations, and in 1972 Mathieu Kérékou seized power and then sought to broaden his appeal to the militant student and trades union movements by embracing a pseudo-Marxist ideology and subsequently a single-party state. At this stage, impoverished Benin looked a more likely candidate for the title of the archetypical 'banana republic'.

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Yet in 1990 Benin became the first African dictatorship to make the transition to competitive multipartyism and to see the removal from power of a military ruler by civil society. It also saw, in 1996, the return to power by way of the ballot of a 'civilianised' Kérékou who, having shed his unconvincing Marxist mantle, had flirted briefly with Islam before embracing evangelical Christianity – hence his proudly adopted nickname 'The Chameleon'.

The latest presidential contest was enlivened in August 2005 when Kérékou made it clear that he had no intention of altering the constitution to do away with the age limit of 70 years for candidates, thus eliminating both himself and ex-President Nicephore Soglo (1991–1996) from the running. There were occasions when the members of his entourage apparently tried to change his mind, and certainly he made some curious statements at the time of the election, casting doubt on the fairness of the contest, which led to speculation that he might not hand over power, but instead seek to capitalise on electoral confusion to extend his rule by decree.

This was not to be, however, and Boni Yayi, a 54-year-old banker, with no political record, secured an overwhelming victory against Adrein Houngbedji, a veteran presidential candidate now competing for the fourth time. Yayi had been an economic advisor to President Soglo as he tried briefly to rescue impoverished Benin's economy by applying neo-liberal nostrums. In 1994 Yayi took up the presidency of the West African Development Bank, where he achieved remarkable success as an institutional reformer before resigning this position to challenge Benin's political 'Old Guard'.

Now that he has emerged triumphant, his most daunting challenge is about to begin. Yayi campaigned on a ticket that promised renewal, good governance and a new beginning. The electorate's expectations are great; the country's economic resource base is not. Benin has few minerals, and its agricultural economy is dominated by the cotton sector, which is notoriously vulnerable to the vagaries of the weather and international markets. The port of Cotonou is underutilised and refurbishment might bring rewards, particularly as Abidjan is still partially paralysed by the Ivorian contretemps. Yayi has talked about privatisation, but this, and its attendant job losses, will bring him into direct confrontation with the vociferous trade unions. The border trade with Nigeria may once again flourish as the latter lifts restrictions on Benin's re-exports. Benin's own domestic market is too small and the country is ill configured to provide a basis for manufacturing growth.

In short, Yayi will enjoy less room for manoeuvre than his supporters may appreciate. He will also have to cope for a year at least with a fractured parliament pending legislative elections in 2007, and there are also questions about the repayment of political debts to those disappointed presidential candidates who supported him in the second round. His new cabinet is made up entirely of new faces, including a number of senior appointments for women.

The new president obviously enjoys the goodwill of other regional leaders, most of whom came to know him well during his long and successful presidency of the West African Development Bank. Several heads of state attended the inauguration, which was not without a certain irony, given that many of them are notably reluctant to retire from leadership.

A clean break with the past in Benin may not be as feasible as many would desire, though in the light of earlier events we may still be pleasantly surprised by Benin.

Trends and markers

Recent data, statistics and indicators

African contributions to UN peacekeeping missions at the end of April 2006

Serial number	Country	Military observers	Troops	Police	Total
1	Algeria	17	2		19
2	Benin	27	1,060	71	1,158
3	Botswana	5			5
4	Burkina Faso	25	2	153	180
5	Cameroon	5		126	131
6	Central African Republic			11	11
6	Chad	11		32	43
7	Côte d'Ivoire			1	1
8	Djibouti			40	40
9	Egypt	68	813	48	929
10	Ethiopia	22	2,738		2,760
11	Gabon	4			4
12	Gambia	12	3	50	65
13	Ghana	60	2,374	127	2,561
14	Guinea	26		91	117
15	Kenya	89	1,352	59	1,500
	Madagascar			6	6
16	Malawi	37	113	23	173
17	Mali	51	3	36	90
18	Mauritius			2	2
19	Morocco	5	1,544		1,549
20	Mozambique	8	4		12
21	Namibia	23	616	7	646
22	Niger	30	368	113	511

Serial number	Country	Military observers	Troops	Police	Total
23	Nigeria	86	1,962	398	2,446
24	Rwanda	18	255	34	307
25	Senegal	39	1, 384	455	1,878
26	Sierra Leone			2	2
27	South Africa	36	1,976		2,012
28	Tanzania	28	3	4	35
29	Togo	18	299	5	322
30	Tunisia	50	473		523
30	Uganda	10	2	40	52
31	Zambia	58	346	73	477
32	Zimbabwe	19		83	102
Total		887	17,692	2,090	20,669

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An analysis and comparison of armed groups in Somalia
Anthony Vinci

**Police accountability and policing oversight mechanisms
in the Southern African Development Community**
Cephas Lumina

ESSAYS

An analysis and comparison of armed groups in Somalia

Anthony Vinci★

Protracted state collapse in Somalia has led to a multiplication and diversification of armed groups. We can speak of at least five types of armed group: faction, warlord, business, court, and Islamic militias. These groups differ in important ways, yet often are simply classified as 'militia' or 'warlord'. This essay seeks to add a measure of analytical rigour to the classification of armed groups and provides a comparison using a framework of purpose, motivations, logistics, and command, control and communication. It concludes with some observations about the importance of making these distinctions when formulating policy for this region.

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Introduction

Protracted state collapse in Somalia has led to a multiplication and diversification of armed groups.[1] We can speak of at least five types of armed group in Somalia: faction militias representing and protecting clans; warlord militias resembling personal armies; militias bought by businessmen to represent their business interests; the shari'a courts' militias; and, in the case of *al Ittihad*, Islamist militias. These armed groups differ in important ways, in terms of their motives and their means of supporting themselves.

The assumption, especially in the press, that armed groups in Somalia are all much the same is reflected in the use of the blanket terms 'militia' and 'warlord'. This is misleading from an analytical point of view and may also lead to the prescription of ineffective or inappropriate responses to particular militias, which, in certain circumstances, may have dangerous consequences.

Not all commentators are guilty of such oversimplification; some analysts do make distinctions between, for instance, faction militias and warlords.[2] However, the distinctions usually have not been as rigorously examined as they could be.

Context

At the point of state collapse, the Somali situation differed in important respects from civil wars in which the state is taken over by one of the factions which sought to overthrow it. In Somalia, no faction was able to seize and retain the sovereignty of the state. Rather, the situation transformed into a series of skirmishes between militias. The eminent Somali scholar I M Lewis sums it up well:

> In 1991/92, reactively influenced by the example of the Somali Salvation Democratic Front (SSDF), Somali National Movement (SNM), United Somali Congress (USC) and Somali Patriotic Movement (SPM), the general tendency was for every major Somali clan to form its own militia movement. Thus clans were becoming effectively self-governing entities throughout the Somali region as they carved out spheres of influence in a process which, with the abundance of modern weapons, frequently entailed savage battles with a high toll of civilian casualties. The political geography of the Somali hinterland in 1992, consequently, closely resembled that reported by European explorers in the 19th century, spears replaced by Kalashnikovs and bazookas. These clan areas could only be entered or traversed by outsiders (people of other clans, foreigners), with the consent of the locals and, usually the payment of appropriate fees or 'protection'.[3]

Indeed, it has been noted that since the collapse of the state, fighting has broken out between all clan groups.[4]

To understand how armed groups have evolved in the Somali context, one must appreciate the nature of the Somali clan system. Most Somalis identify themselves primarily in terms of their lineage or clan. These clans are segmented into six clan families that break down into various sub-clan units, all the way down to the level of the individual.[5] Clans are led by elders who are responsible for negotiation and dispute mediation.

An overlaid social unit is the *diya*-paying unit, composed of close relatives who contract to pay (or receive) blood-money, *diya*, if one of the members of the group kills an individual from, or raids the resources of, another group.[6] The *diya* process is used as a method of conflict resolution, short of revenge killings, and requires clan elders to negotiate a payment in expiation of the crime.[7]

In Somalia, political entrepreneurs, in general, must mobilise segments of the clan system to support them. This mobilisation can be based on the proximity of the relationship, or may involve the use of less closely related groups, in alignment against a common opponent; this is referred to as *gashaanbur* in Somali pastoral society.[8] Clans might also form alliances with related clans in order to counter the perceived power of a rival clan (which might have its own alliances).

Inversely, factions may form for two reasons. Because segmentation possibilities are endless within the Somali kinship system, there is ample room for factionalisation based on the needs of the clan. Factionalisation is also possible, however, based on the choice of particular political entrepreneurs who make their own rational choice. This seems to have been the case when Usman Ato split with Mohammed Aidid in 1994.[9]

As a result of factionalisation there has been a vertical multiplication of separate armed groups in Somalia since the early 1990s. Initially, clans joined together to fight the Somali government, which was roughly equated with the Darod clan and its allies, controlled by then President Mohamed Siad Barre. In 1991 Barre was ousted, and since then there has been a "devolution of warfare to lower and lower levels of clan lineages" as the higher level alliances factionalised.[10]

Somali armed groups

Along with the multiplication in factions, there has been a lateral growth in the types of armed groups in Somalia since the civil war.[11] With the collapse of the state, the clan or 'faction' militias became the providers of security and, often, the political representatives of the clans. These faction militias have continued to constitute the bulk of the armed groups in Somalia. Some of the militia leaders, however, were able to gain independence from the clan, thereby using the militias to represent their personal interests: they became warlords. Since the mid-1990s, businessmen have also raised their own armed militias to defend their business interests. These militias have sometimes been

outsourced to the shari'a courts that have formed throughout Somalia. Finally, at least one set of Islamist militia has been set up by *al Ittihad*.

The basic structure of each of these types is roughly similar and the nature of their strategy and tactics are also roughly similar. Militias are typically led by a 'warleader', who is the direct military commander of the militia. Below the warleader there is a smaller group of permanent, trained officers and soldiers, who are under his direct control. Further down is a larger group of paid or volunteer fighters.

However, these types of armed groups all vary along set lines. These include the reason for their formation, their purpose, the way they motivate their fighters, and their logistical systems.

Formation and purpose

Faction militias

Faction militias are the most prominent type of Somali armed group. These militias can range in size from tens to hundreds of men and are formed along clan lines and within the clan structure. Daniel Compagnon notes that clan-based armed groups arose naturally in Somalia in the 1980s when armed groups such as the Somali Salvation Democratic Front (SSDF) were forming to combat Barre's government. The clan-based militia organisation was easier as, "given the lack of resources (both money and weapons), the unit size requirement of guerrilla warfare, and the difficulty of giving military training to individualistic camel herders, it was more efficient to opt for a military structure based on kinship segmentation".[12]

In faction militias, the warleader is the representative of the clan. He is assigned by the clan elders to lead an armed group, but although he commands the fighters, the latter remain loyal to the clan. Even though in stable periods warleaders are typically not very popular, during periods of potential conflict the clan will turn to them for help, for "the clan feel[s] that they are their savior … because they command the firepower".[13] Yet, his ability to please the clan is paramount and is based on his fulfilment of his duties. Failure to do so may result in the clan abandoning him.

Regardless of the personal ambitions of any particular warleader, the faction militia represents the clan's political aspirations and defends its territory and interests. With the loss of a state that plausibly could provide security for the people of Somalia, the clan became the relevant political community and the faction militia is what provides the clan with security. Even when it has additional goals, such as representation in high level political meetings, the first and foremost issue for the militia is security. Beyond this, the military power which the militia provides grants a method by which the clan can be represented in politics amongst other clans. Thus, the faction militia should be seen as an extension and representative of the clan.

Warlord militias

In some instances, a warleader may become independent of the clan and control a militia without being connected to the clan's political, social and economic structure. Such men are known as warlords and we can refer to their armed groups as 'warlord militias'. In most cases, militias exist on a continuum, with a varying mixture of clan and personal loyalty. However, in extreme cases, a warleader may come to monopolise the loyalty of fighters and use the militia for personal political ambitions. In other instances, the warlord may take the initiative in putting together a, usually small, militia made up of fellow freelance militiamen.

The warlord militia has no other purpose than to reflect the personal, often political, goals of the warlord himself. Although he is often concerned with raising funds, generally, this is used only as a method of retaining his fighters; the warlord is concerned with gaining power; clan loyalties and other issues of public good are completely discarded, or used solely to further personal goals.

Yet, the warlord militia is structured much like the faction militia. The warlord is at the pinnacle of the hierarchy and below him are fighters. Because there is no clan to represent and form the basis of the militia, however, rather than these troops being irregulars who are members of the clan, they are privately hired freelance militiamen.

Business militias

Initially, Somali businessmen funded factions and warlords, but as the conflict progressed, they found this counterproductive. For example, the two main factions controlling Mogadishu in the 1990s typically received backing from businessmen. However, these administrations never established the security and predictability businessmen needed and they began to lose money on their 'investment'. More generally, private security was not always adequate in an economy based on services and cross-regional and cross-border trade. Clearly, greater order and security were needed to promote commerce.

For these reasons, many businessmen ceased their support for warlords in the late 1990s.[14] Thereafter, businessmen directly employed freelance militiamen, along the same militia structure outlined above, but with the businessman himself as the warleader. The businessman might also outsource this role to another experienced person. The militia was otherwise organised around the standard structure and members might be drawn in whole or part from the businessman's clan or be privately hired. In some cases the businessmen formed coalitions in order to accomplish militia formation and management. The *raison d'être* of the business militia is the defence and representation of its patron's business interests. This may include defending property or defeating a potential rival, but the logic behind its actions will always go back to the businessman's interests above those of clan or any other factor.

Court militias

Often businessmen have outsourced their militias to the shari'a courts that have emerged to fill the legal vacuum left in the wake of state collapse.[15] These courts were established in Mogadishu and elsewhere to provide some order through a shari'a law system. Typically they and their militias are clan-based and their rulings hold within a clan's territory. They are financed by 'taxes' from businessmen, in exchange for providing the latter with armed guards and for maintaining social stability and providing (public) protection services.[16] These services range from relations with groups such as the Rahanwein Resistance Army (RRA) to clearing the road from Mogadishu to Merka.[17] In general, the court militia has a similar structure to the business militia.

The courts are focused on defending the interests of their rulings and of their backers. Unlike the faction or warlord militia, they do not generally seem to have their own strategic political goals. Certainly the businessmen who fund these courts exercise some influence, but it is difficult to assess this accurately. Finally, the Islamist goals of such groups tend to be weak or non-existent, except where they have been infiltrated by the more fundamentalist *al Ittihad* organisation.[18]

Islamist militias

Related to the court militias are Islamist militias, in particular those of the fundamentalist organisation *al Ittihad,* which has controlled militias at various times since 1991. *Al Ittihad* has controlled areas including Merka and Kismaayo and the town of Luuq in the Gedo region.[19] Although its militias are organised like other types, *al Ittihad* bases its support on religion rather than clan or other factors. Though the group initially functioned like faction militias in looking to control territory, more recently it has switched its strategy to focus on controlling courts.[20]

The true intentions of *al Ittihad* are not completely clear. The organisation, which is comparable to the Muslim Brotherhood of Egypt, is concerned with the creation of an Islamic state. When *al Ittihad* managed the administration of towns, it did carry out this promise and instituted Islamic law and practices.[21] However, the implications of these goals are debated: they range from an innocent wish to uphold Islamic values to accusations of creating a base upon which transnational Islamic militants could attack the Ethiopian government to being a front for *al Qaeda*.

Comparison

These five types of armed groups in Somalia have all evolved under similar circumstances. Moreover, they have all had to meet similar requirements in order to perpetuate their organisations. First, they have had to motivate individuals to fight for them. They have had to obtain weapons and equipment with which to fight. Finally, they have had to institute command, control, and

communication structures with which to direct their forces. The following section will compare the types of armed groups in Somalia along the lines of this tripartite framework.[22]

Motivation

In general, there are two methods of motivating soldiers in Somalia. Either the militia leader may rely on clan loyalty (or, in the case of *al Ittihad*, religious loyalty) or on direct economic incentive. Loyalty is tied into the nature of the clan system and is dependent, at least tacitly, on the consent of the clan. Kinship is used as a "ready-made ideology"[23] and provides a strong incentive for individuals to fight voluntarily.

It has also become possible for militia leaders directly to enlist fighters following the increase in the numbers of freelance militiamen in Somalia, and this has allowed for the growth of non-clan-based armed groups, including warlord, business, and court militias. Since the late 1980s, many young, unemployed and disenfranchised Somalis, or *mooryaan*, have come to urban areas, especially Mogadishu, in order to find jobs, adventure, or to fulfil their ambitions. These men are distinct from other parts of Somali society. Usually they have come from nomadic backgrounds or are otherwise separated from their clan. Many are addicted to drugs, beyond the ubiquitous *khat*. They sometimes even speak their own distinct dialect that is "virtually unintelligible to outsiders".[24] Since these men usually come from non-local clans, they are able to circumvent many of the rules of interclan rivalry.[25] Because they are 'foreign', in that they are not from the local clans, they are free from traditional commitment issues associated with clan life, such as *xeer* or *diya* payments for transgressions.[26] This means that they consider looting and other generally unacceptable activities permissible.[27]

Initially, these *mooryaan* were concerned with finding a place from which to prosper within Barre's patronage networks.[28] This practice continued after the collapse of the Somali state, as their loyalty could be sold into the patronage networks of warlords and other militia leaders.[29] In sum, this meant that there was a reservoir of freelance gunmen into which aspiring militia leaders could tap. Although militias, and faction militias in particular, continued to use clan-based fighters, the *mooryaan* fundamentally changed the balance of power in Somalia by allowing militias to form outside the clan's control.

Faction militia

The faction militias and their warleaders use clan-based loyalty to motivate voluntary recruits. The members of faction militia are typically recruited directly from a single clan.[30] The council of clan elders will send representatives to each family's house looking for young men to serve. There is no history of forced conscription in Somalia and the men are all voluntary recruits. They will likely already be armed or have been mobilised before as part of a standby militia. Similar to conventional

reserve systems, they are called up to fight and then can demobilise back to civilian life. Thus, faction militias are closest to what we think of as true militias in that they are the temporary armed extension of a larger civilian political community.

Warlord militia

The independence of a warlord depends on his ability to support himself without the clan's backing. Since the involvement of clan elders is necessary to motivate young men to fight voluntarily, they have to be 'kept in the loop'. What truly shifts the balance towards allowing a warlord to break away from the clan is the use of freelance gunmen. The *mooryaan* allow the warlord to monopolise fighters' loyalties because these can be bought on a pay-for-service basis. In Somalia, where the average young man lives at, or below, the poverty line (usually calculated at US$1 per day), the motivation to be paid for combat services is strong. Immediate economic incentives thereby provide a warlord with the tools necessary to obtain his independence.

However, the trade-off is that the warlord cannot rely on the loyalty of these troops and must keep them from selling their services to a rival. In the absence of economic incentives, such fighters may move their loyalty to another patron, set up an economic enterprise of their own, or even rebel against the patron. As one aid worker put it, "all is well if the militias are getting paid … if not, they run wild, setting up their own checkpoints etc".[31] Consequently, the reliance on economic incentives deepens a reliance on sustainable resource exploitation.

Business militias

As in the case of warlords, business militias use immediate economic incentive to motivate their fighters. Even though they are usually affiliated with one sub-clan, they rely even less on clan loyalty because business, by its nature, crosses clan lines and is not overtly political. Private security, however, is dangerous because, at times, the security force might turn on their employer and extort from him.

Court militias

Like warlord and business militias, court militias rely on freelance fighters, whose loyalty is secured through economic incentives. In the same way this is necessary, as without the clan to provide a source of loyalty, the fighters would have little incentive to continue fighting.

Islamist militias

Islamist militias can rely on religious belief for loyalty. This loyalty can cross over clan lines. For example, in its administration of Luuq, *al Ittihad* also invited its members who were not part of the locally dominate Marehaan clan to participate in governance.[32] However, this Islamic loyalty was more based in the upper echelons of the *al Ittihad* leadership. The fighters themselves were "composed mainly of young gunmen [*mooryaan*, known locally as *jiri*], whose devotion to tenets of

fundamentalist Islam was negligible and who fought in the name of *al Ittihad* only because *al Ittihad* paid them".[33]

Logistics

The sources of militias' weapons and other goods are varied and depend on the region and particular history of a militia. Nevertheless, since the collapse of the state, a common method for supplying weapons and other equipment has been looting. Other frequent approaches to supply needs have been to take part in various economic entrepreneurial activities or to be funded by businessmen or external actors.

Somalia's strategic importance during the Cold War made it one of the best-armed states in sub-Saharan Africa, and through Barre's policy of divide and rule, various clans were armed. After Barre's fall the 'public' goods of the state, formally controlled by individual clans, were extensively looted by the factions, especially the large state armoury.

Businessmen have also been apt to back militias, especially the faction militias of their own clans. These are businessmen who do not have their own militia as discussed above. In general, militias are financed by businessmen for two reasons. In the short term, there are financial rewards from looting or establishing control over certain properties. In the long term, financing a militia is an investment gamble on potential political power.

Militias have also created a range of enterprises that are valued because of their ability to command force. Common practices include setting up checkpoints and demanding payment for safe passage, or occupying ports or airports and demanding 'taxation' for their use. In some instances, land occupation may become institutionalised, where militias set up fiefdoms and trade taxation for protection from other militias.[34] In some cases they even 'normalised' relations, as militia groups intermarry with local women.

International aid can be used by militias in both tactical and strategic ways to make profit.[35] Tactically, by pretending to be non-combatants, militias can coerce, extort, or manipulate humanitarian aid agencies into giving them aid. Strategically, population movements can be used to dictate the placement of aid. An 'aid economy', such as providing housing or security for the international agencies, can be created, which is then tapped by the militias for their own funding. In particular, it is common practice for UN agencies and NGOs to hire private guards. In some cases, the militia effectively forces the agency to rent their protection services in order to safeguard the agency.[36] A related issue concerns militias being hired by multinational corporations. This is a different situation, however, because the private corporations, unlike NGOs and the UN, are themselves in competition. An example is the competition between Dole and Somalfruit in

southern Somalia.[37] The companies hired local militias and used them to threaten farmers into selling them bananas.[38]

The large Somali diaspora also provides funding to the militias within Somalia using the worldwide networks of the numerous Somali remittance companies. Support may also come from external Somali political actors; for instance, the Somali National Front (SNF) was funded by former Barre government figures living in Kenya.[39]

In some cases, the militias acted as proxies of the foreign policies of external states, especially Egypt, Libya and Ethiopia. This led to Egyptian and Libyan funding of Aidid and Ali Mahdi in Mogadishu.[40] Ethiopia, for its part, has funded the Puntland administration, Hadawdle (USC/SPM) militia, the RRA, and the SNF.[41] In fact, the International Crisis Group has noted that formally independent and powerful warlords Hussein Aidid and General Morgan have been completely dependent on Ethiopia.[42]

Faction militias

Faction militias have a diverse set of means of support that arise from their clan connections. The militias are extensions of clans, many of which have farming or nomadic roots and can provide food and other basic survival goods. The clans also turn to their, often extensive, overseas diasporas for support.

Like other militias, faction militias may develop various economic enterprises on their own. These include looting, the diversion of humanitarian aid, support from businessmen, and occupation of land. However, these enterprises may represent the beginning of the slippery slide into independence for a warleader as they provide a source of funding which is potentially separate from the clan.

Warlord militias

Warlords are concerned with gaining and maintaining their independence, and this is only possible if they have the economic resources to fund their militias. They participate, therefore, in most of the economic activities listed above with the goal of monopolising the economic activities or relationships at the expense of the clan. This may mean having a private port to tax or being the sole connection for external supporters. A good example is Mohamed Quanyare Afrah, based in the Deynle neighbourhood of Mogadishu, who receives funds from fishing interests and a private airstrip, among other ventures, and uses these to maintain his militia.[43]

By controlling finances, warlords buy the loyalty of the men they need as well as the equipment to arm them. Large cash reserves are necessary for warlords to be effective, as a firefight can cost $4,000 an hour in ammunition alone.[44] Thus, we should not necessarily see the warlord's penchant for economic exploitation as an end, but as a means to securing power through the control of a militia.

Business militias

Businessmen, on the other hand, are fully focused on economic exploitation. As detailed by Mark Bradbury and Peter Little, among others, the economic sector in Somalia is doing relatively well, in spite of state collapse.[45] Moneymaking enterprises include 'grey' and 'black' market activities such as checkpoints and weapons trading, as well as 'whiter' activities which run the gambit from trade in cattle, to money transfers, to providing utilities. Broadly speaking, in the early 1990s, businessmen focused on grey-area trade in looted goods, weapons and food aid, but following the UN intervention in 1993/94, they made huge sums of money through real-estate rentals, money exchange and transport, which allowed them to shift their focus to other businesses such as hospitality and telecommunications.[46] As with warlords, these enterprises provide the cash to buy militia loyalty, weapons and other necessary equipment.

Court militias

Court militias have been backed by businessmen and, to some degree, by the clans themselves. This is unlike warlord and business militias, which have come to find their own wealth-generating activities. In exchange for their management of the militias, the courts are expected to create and maintain as much predictability as possible. This arrangement clearly limits the independence of the court militias.

Islamist militias

Al Ittihad also engaged in entrepreneurship in order to raise funds. For instance, they controlled the ports in Kismaayo and Merka. There has also been some attempt by *al Ittihad* to incorporate businessmen into their organisation to find funding.[47] What differentiates them from other types of militias is that they also are funded by international, non-Somali Islamist sources. This is possible because of their cross-cutting ideology. It is not clear to what extent *al Ittihad* had terrorist or other subaltern funding, but they certainly have been funded by Islamic NGOs in various guises.

Command, control, and communication

Interestingly, the different militia types have essentially the same command, control, and communication structure. In particular, the militias have a relatively decentralised power structure. This is partially because of the nature of the clan system, in which there is little application of discipline in the Western military sense. Militia fighters are volunteers, and severe discipline, especially executions, would fall under the traditional system of *diya*, in which grievances must be recompensed for harm or loss and is therefore not frequently practised. This is also true of non-clan-based militias as a result of the inherently undisciplined nature of the *mooryaan*. The relative lack of discipline and direct control is combined with the presence of cellular telephones, making it possible to coordinate troops across long distances. Consequently militias are able to

maintain a relatively undisciplined and decentralised command and control structure but keep units in communication.

Furthermore, even though the militias have different motivational and economic attributes, their strategies are essentially similar. Though the goals of Somali warfare may differ, from controlling economic resources to gaining the status necessary to take part in peace processes, the strategies towards obtaining these goals are convergent. Military power is used to control territory or populations, force other actors into making concessions, or obtain further resources. Indeed, the militias have so converged in their methods of warfare that we may speak of a Somali way of war.

The Somali way of war

The strategy and tactics employed by all militias constitute an evolution in the combination of traditional clan raiding practices, conventional army tactics, and new warfare methods developed after the collapse of the state. The militarisation of Somali nomadic life has left Somalis with a heritage of raiding practices easily deployable in the semi-anarchy of post-state Somalia. The ample funding of Barre's army by both superpowers during the Cold War left the country with a large military class, including militia leaders such as General Morgan and Mahumud Aidid, who have lent their expertise to the militias. Combined with these influences, there is the development of new tactics based on the unique environment of Somalia, in particular the use of 'technicals' (pick-up trucks mounted with heavy machine-guns or grenade launchers) and the use of *khat* by fighters.

This has resulted in a special brand of Somali tactics and a unique Somali way of war. Ambushes are the most common form of attack, since they demand that the militia be brought together for only a short period and promise looting after the attack. Larger, coordinated attack or defence operations are much more difficult. In general, it is a very fluid warfighting method. The UN illustrates it nicely:

> … armed clashes tended to take the form of wild, chaotic exchanges of fire, featuring front-lines which could shift fifty or one hundred kilometers in a day as lines of defense disintegrated and regrouped. Supply lines were ad hoc to nonexistent, relying mostly on looting; occasionally a [technical] was captured or destroyed simply because it ran out of fuel.[48]

This evolved out of the more conventional warfare which took place early in the war, in which "clan militias held neighborhoods tenaciously and shelled one another's positions for weeks on end".[49] More recently, with the growing expense of buying, rather than looting weapons and ammunition,

and more limited political goals, fighting has mostly become smaller in scale and more concerned with the defence of checkpoints and other economic resources.

Conclusions

This essay is intended to counter the monolithic view of Somali armed groups and to analyse the types of armed groups that have arisen in the ongoing conflict. Admittedly, these are idealised categories and merely represent trends in the different groups' means of mobilisation. There is also a significant amount of overlap and reversion. Nevertheless, we can draw some conclusions about the security implications of these groups.

There has not been space here to compare and contrast all the types of armed groups, but it is instructive to draw some insights from contrasting the warlord militias with the others.

The warlord militia differs from others in terms of its purpose for fighting, the motivation of its fighters, and its logistics system. The warlord controls his fighters for his own personal, political purposes, drawing the forces together in a patronage system. The faction militia, on the other hand, can turn to clan loyalty – a more lasting means of motivating fighters. In consequence, the warlord has to be concerned primarily with economic exploitation, for this is essential if he is to retain power over his militia, since he cannot rely on loyalty. This contrasts with the businessman and his militia, for whom economic ends in themselves are sufficient. The warlord militia also differs from the faction militia, which can turn to external diaspora supporters with less fear of a loss of authority, since the faction militia is only an extension of the clan.

It is important to make these distinctions, because they help explain the warlord's interaction with domestic and international actors. For instance, it may be possible to bribe the warlord, since he needs economic resources to maintain power, though there will be limits to the effectiveness of this tool in that he will not dissolve his militia because its maintenance remains essential to his own personal power. Appeals to the warlord's sense of clan loyalty will be less effective than in the case of a faction militia. In general, we must keep in mind that there are specific responses to warlords which may be valuable in specific cases when they are being dealt with. This more nuanced way of considering armed groups in Somalia is particularly valuable when considering security.

Acknowledgement

Notes

1   The term 'armed group' is used here to refer to organised, non-state military actors.

2   The work of Mark Bradbury, Ken Menkhaus and the War Torn Societies Project provides examples of such distinctions. See M Bradbury, Living with statelessness: The Somali road to development, *Conflict, Security and Development* 3(1), 2003; M Bradbury, interviewed by S Feldman and B Slattery, Living without a government in Somalia: An interview with Mark Bradbury, *Journal of International Affairs* 57(1), 2003; K Menkhaus, Traditional conflict management in contemporary Somalia, in I W Zartman (ed), *Traditional cures for modern conflicts: African conflict 'medicine'*, Lynne Rienner, London, 2000; K Menkhaus, Somalia: Combating terrorism in a failed state, International Crisis Group (ICG), Nairobi, 2002; K Menkhaus, Political Islam in Somalia, *Middle East Policy* 9(1), 2002; K Menkhaus, State collapse in Somalia: Second thoughts, *Review of African Political Economy* 97, 2002; K Menkhaus, *Warlords and landlords: Non-state actors and humanitarian norms in Somalia*, Liu Institute for Global Issues, University of British Columbia, 2003; K Menkhaus, Somalia: State collapse and the threat of terrorism, Adelphi Paper 364, Oxford University Press, Oxford, 2004; War Torn Societies Project, Towards social integration of the militias and armed youth (draft), WSP Somali Programme in Puntland, 2000; War Torn Societies Project, Somalia: Path to recovery building a sustainable peace, WSP Somali Programme, 2004.

3   I M Lewis, *Blood and bone: The call of kinship in Somali society*, The Red Sea Press, Lawrenceville, NJ, 1994, p 231.

4   A M Issa-Salwe, *The collapse of the Somali state*, Haan Associates, London, 1994.

5   These clans are the Darod, Isaaq, Dir, Hawiye, Rahanwein and Digil.

6   I M Lewis, *A modern history of Somalia: Nation and state in the Horn of Africa*, Westview Press, Boulder, Colo, 1988, p 11.

7   K Menkhaus, Traditional conflict management in contemporary Somalia, op cit. Clans can also interact in peaceful ways through *xeer*, a set of customary laws. The laws are precedent-based and passed down through oral transmission.

8   D Compagnon, Somali armed movement: The interplay of political entrepreneurship and clan-based factions, in C Clapham (ed), *African guerrillas*, James Currey, Oxford, 1998.

9   Ibid.

10 Menkhaus, *Warlords and landlords*, op cit, p 20. In particular, there has been significant intra-clan fighting amongst the sub-clans of the Hawiye and Darod clans.

11 The following typology is based loosely on War Torn Societies Project, Somalia: Path to recovery, op cit.

12 Compagnon, op cit, p 77.

13 Interview, UN Source, Nairobi, 30 March 2005.

14 International Crisis Group, *Somalia: Countering terrorism in a failed state*, ICG, Nairobi/Brussels, 2002, p 3.

15 Menkhaus, *Warlords and landlords*, op cit, p 30.

16 United Nations Development Program (UNDP), Somalia human development report 2001, UNDP, Nairobi, 2001.

17 Ibid.

18 Menkhaus, Political Islam in Somalia, op cit.

19 Ibid.

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22 For a more detailed description of this framework, see A Vinci, The 'Problems of mobilization' and the analysis of armed groups, *Parameters* 36(1), 2006.

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25 Not all freelance militiamen might be considered *mooryaan* but *mooryaan* make up the bulk.

26 W Reno, Somalia and survival in the shadow of the global economy, Working Paper 100, Queen Elizabeth House, Oxford, 2003, p 15.

27 Another notable effect of *mooryaanism* is that the Somali traditional respect for the safety of non-combatants in conflict, known as *birimageydo* ('to be spared from the iron') has broken down (WSP 2004).

28 Reno, op cit, p 15.

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Police accountability and policing oversight mechanisms in the Southern African Development Community

Cephas Lumina★

The police enjoy unique and special powers in the furtherance of their duties. Depending on how these powers are used, they may either protect or violate human rights. Therefore the exercise of police power requires that it should be used responsibly. Over the years, however, the involvement of police and other law enforcement officials in systematic abuses of human rights and attendant police 'cover ups' in many countries have underscored the need for oversight of their actions. This article surveys the various mechanisms for policing oversight in countries within the Southern African Development Community.

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Introduction

The police are given unparalleled and special powers in the furtherance of their duties, including the power to detain and to use force. Depending on how these powers are used, they may either protect or violate human rights. Consequently, the exercise of police power requires that it should be used responsibly. In short, accountability is an inherent aspect of professional policing.

Over the years, however, the involvement of police and other law enforcement officials in systematic abuses of human rights and attendant police 'cover-ups' in many countries has underscored the need for oversight of their actions.[1] Significantly, such practices have raised questions about whether law enforcement agencies are capable of unsupervised self-regulation; whether the police can police themselves and deal effectively or appropriately with unethical conduct such as corruption or misuse of force.[2] In particular, concern has been raised about whether police can impartially investigate allegations of abuse of power involving one of their own.[3]

Although historically many countries have been content to allow the police to keep their own house in order, with limited external oversight administered by the courts and the government, public concern over questionable police practices has led to experimentation with and adoption of various methods of non-state (civilian) oversight and control.[4] Civilian oversight is a method of police accountability that is premised on, *inter alia*, the inability or unwillingness of the police to police themselves in a manner acceptable to the public, and the latter's belief that independent investigation of police conduct is fairer and more objective.[5] As an external review mechanism, civilian oversight offers an independent forum where victims or witnesses of police abuse may file complaints or give evidence at hearings concerning the event complained about. It also offers an opportunity for citizens to influence broader policy concerning law enforcement.

This essay surveys the various mechanisms for policing oversight in countries within the Southern African Development Community (SADC) and offers some suggestions about oversight in the region based on a brief review of other global practice.

Policing oversight: A brief historical sketch

It is difficult to state with precision when the earliest attempts at policing oversight were made, but is fair to say that the question of holding police to account has preoccupied societies since ancient times. Thus, for instance, the Roman satirical poet Decimus Junius Juvenalis asked: "Who will guard the guardians?" Soon after his appointment as Home Secretary in Britain in 1822, Sir Robert Peel appointed a select committee to consider policing in London. The committee expressed the view that, "it is difficult to reconcile an effective system of policing with that perfect freedom of

action and exemption from interference which are the great privileges and blessings of society in this country".[6]

These comments provide an indication of public concern about police accountability, yet they are not reflective of civilian oversight of policing as it is now known. Civilian oversight involves people external to the police assuming a role in holding the police to account for their actions.

Although civilian oversight of policing is now an established part of policing in many parts of the world, it does not have a long history in English-speaking countries. Traditionally, in many of these countries external oversight of the police has been administered by the courts and government. In the United States of America (USA), attempts at civilian oversight of the police began in the 1940s, but became firmly established only in the 1970s and after.[7] Almost three-quarters of the police departments in the largest US cities have some form of civilian oversight. In Australia, Canada and the United Kingdom, civilian oversight of the police emerged in the 1970s and 1980s.[8] In other countries, such as India and South Africa, efforts at incorporating civilian oversight mechanisms as part of police reforms started in the 1990s.[9] There are now many varieties of civilian oversight around the world.

The functions of policing oversight

The general purpose of policing oversight is to ensure that police are accountable for the performance of their tasks. In this regard, civilian oversight mechanisms perform a variety of functions, including conducting independent investigations, reviewing policy, providing information to the public, community outreach, and creating early warning systems.[10]

Independent investigations

Many civilian oversight mechanisms conduct independent investigations of complaints into police conduct or provide some kind of input into such investigations.[11] The nature and ambit of these investigations vary: some oversight bodies have the power to hold hearings and to subpoena witnesses. The power of subpoena is particularly important as a full investigation into a complaint may only be possible where witnesses can be called upon to testify, sometimes under threat of legal sanction. An investigation may be hampered by a refusal to cooperate on the part of either the police officer or officers concerned[12] or a member of the public.

Review of policy

An important aspect of policing oversight is the ability of oversight bodies to scrutinise police polices and procedures, and to make recommendations in respect thereof.[13] The purpose of this

process – called policy review – is to prevent the proliferation of public complaints in the future by identifying problems beforehand and recommending corrective action to improve policing and thus reduce complaints. This function has been referred to as the 'learning' function of policing oversight.[14] Policy review also serves to provide a forum for public discussion of police practices and a formal mechanism for recommending policy changes.[15]

According to Human Rights Watch, in places where oversight agencies have pushed for specific reform and seen them implemented, public trust in both the oversight body and the police department has been enhanced.[16]

Public information

It is generally accepted that the lack of information about government tends to sow distrust and suspicion among citizens. In view of the historical secrecy of police departments,[17] the provision of information to the public concerning the police and the complaints process is considered one of the most important functions of oversight mechanisms. This information itself serves as a kind of oversight and accountability. Oversight bodies are able to collect and disseminate information that would otherwise be unavailable to the public.

Community outreach

Community outreach by civilian oversight bodies involves speaking to community groups, informing the public about police complaints processes, and receiving information about community concerns. This is especially important among communities that have a high degree of distrust and fear of officialdom, including the police. Community outreach is a vitally important component of an effective civilian oversight mechanism.

Early warning systems

A recent development in policing oversight has been the creation of what are referred to as 'early warning systems'. These are designed to identify police officers ('problem-prone' officers) who are the subject of large numbers of complaints. Research in the US indicates that "in virtually every police department a small percentage of officers receive a disproportionate share of all complaints".[18] An early warning system provides an 'effective response' to the problem of those members of the police organisation who seem to have a problem dealing with members of the public in a professional manner.

Corrective intervention usually takes the form of counselling or retraining by supervisory officers, changes of assignment, closer supervision, and meetings with superiors. Counselling is designed to be informal, non-punitive and separate from the normal disciplinary procedures.

It has been asserted that civilian oversight mechanisms can play a significant role by recommending the adoption of an early warning system where one is not already in place, and establishing and maintaining its own early warning system through its access to complaints data.

The issue of independence in policing oversight

One of the most controversial issues in policing oversight is the question of the independence of the oversight body. A key objective of civilian oversight is to ensure an independent review of complaints by citizens concerning police action. 'Independence' refers to independence from the internal police department procedures; it is designed to "enhance the credibility or legitimacy of the complaints process in the eyes of the community".[19]

Whether or not a particular mechanism is in fact independent is a matter for debate. There is no formula for defining or measuring independence. Thus, a mechanism may be independent of the relevant police department in terms of its formal organisational structure, but community perceptions may be that it is not truly independent. The perceived independence of a civilian oversight mechanism may depend to a large extent on the personality of the person who holds the key office in it. [20]

Policing oversight mechanisms in SADC: An overview

This section provides an overview of oversight mechanisms that are commonly used in SADC countries. It should be noted, however, that examples of similar mechanisms can be found all over the world, although the terminology employed may be different. Further, there are important variations among oversight mechanisms with respect to organisational structure, mission and function.[21] Before surveying the policing oversight mechanisms utilised within the SADC region, however, it is useful to outline the legal basis for oversight.

The legal basis for policing oversight

There are a number of international and human rights standards that provide the legal basis for policing oversight in the SADC region. The most notable of these are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the Convention against Torture'), and the African Charter on Human and Peoples' Rights ('the African Charter'). All of these instruments provide for a number of rights which are not only affected by the lawful exercise of police powers (including the rights to liberty and fair trial, the right to privacy, freedom of assembly, association and movement, the prohibition of arbitrary arrest

and detention, the prohibition on torture, and the right to life), but also effectively place limitations on the exercise of police powers. In addition, the ICCPR, the Convention against Torture and the African Charter all impose *legally* binding obligations on the states parties to take 'effective' legislative and other measures to give effect to the rights guaranteed therein.[22] The Convention against Torture not only enjoins the states parties to take "effective legislative, administrative, judicial or other measures to prevent acts of torture" within their territories but also obliges them promptly and impartially to investigate all allegations of torture.[23] All of these provisions have implications for police accountability and arguably provide the international legal basis for policing oversight.

The international legal obligation to investigate allegations of torture and ill-treatment is firmly established in the jurisprudence of the various human rights supervisory mechanisms. For example, in *Assenov v Bulgaria*[24] and *Labita v Italy*[25] the European Court of Human Rights found violations of Article 3 of the European Convention of Human Rights (prohibition on torture) where allegations of torture had been made by the applicants, even though no physical evidence of torture had been produced, and the state had failed to investigate these. The court held that the prohibition on torture taken together with the general obligation of states in Article 1 of the convention to "secure to everyone within their jurisdiction the rights in the Convention" imposed an obligation on the states parties to investigate all allegations of torture or ill-treatment. In *Zeleya Blanco v Nicaragua*[26] the Human Rights Committee emphasised the state's duty to investigate allegations of torture or ill-treatment.

It is notable that all SADC member states are parties to the ICCPR and the African Charter, both of which include the prohibition of torture and ill-treatment. With the exception of Angola and Tanzania, all SADC states have ratified the Convention against Torture. Consequently, they have assumed legal obligations not only to respect the rights protected under these instruments but also to investigate all allegations of torture and ill-treatment by the police within their territories. Conducting state oversight and facilitating non-state oversight of the police is one way in which these states can fulfil this international obligation.

Other international standards relevant to the policing function are the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990. The latter enjoins governments and law enforcement agencies to adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. Although these are not legally binding standards, member states of the United Nations (which all SADC states are) are expected to respect them.

At the sub-regional level, in 2001, the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) adopted a Code of Conduct for Police Officials which recognises that

"Ethical standards, in particular, human rights norms, are an important tool in the professionalisation of police forces/services everywhere and in SARPCCO member countries."[27]

The police organisations of most states are created by the national constitutions and are governed by specific police legislation. Some of this legislation is outdated, however, and cannot deal effectively with the challenges of policing in modern democracies.[28] Further, most legislation has been overtaken by constitutional and human rights developments, including the democratic requirement for transparency, accountability and respect for the rule of law.

Internal oversight mechanisms

Internal investigation

Many countries, including several within the SADC region, have internal police investigatory mechanisms in which the police themselves investigate complaints of wrongdoing by fellow police officers.[29] These mechanisms are generally provided for in terms of regulations governing the police and usually entail the receipt, investigation and disposal of complaints by sworn police officers assigned to a police department's 'internal affairs' unit or office. In South Africa, for instance, the police service has various systems for monitoring standards and receiving complaints from the public, including a complaints investigation section and inspectorate in the Office of the National Police Commissioner.[30]

In Malawi, any police officer who, *inter alia*, "offers or uses unwarranted personal violence to or ill-uses any person in his custody" is deemed to have committed a disciplinary offence. Such an offence may be investigated and the errant officer punished.[31]

A variation of an internal investigatory procedure is the 'inquiry file' utilised in a number of countries.[32] In Zambia, for example, when a complaint is lodged concerning a wrongful death or torture, the commanding officer in charge of the police station concerned may open an 'inquiry file' on the incident involving officers under their command. They can also order disciplinary action if the situation so warrants. However, there is no mechanism to ensure that a commanding officer opens an inquiry. Should an inquiry file be opened and completed, it is transferred to the provincial commanding officer who then determines whether to formally charge the police officer or officers concerned with a criminal offence or offences. Ultimately, the Director of Public Prosecutions determines whether the police officer will be prosecuted.

It should be noted that internal investigatory mechanisms are generally considered less independent than other mechanisms. According to Amnesty International, such mechanisms in place in some SADC states are generally ineffective:

> [T]hey fail to meet the needs of victims of human rights violations in ensuring the confidentiality of their complaints and providing security against reprisals. They do not inspire trust in the people they are meant to serve. They are not transparent and there is little public awareness of the procedures for making complaints.[33]

In similar vein, after a study of internal affairs investigations in several cities in the USA, Human Rights Watch concluded that:

> [I]nternal affairs units conducted substandard investigations, sustained few allegations of excessive force, and failed to identify, or deal appropriately with, problem officers against whom repeated complaints have been filed. In many cases, sloppy procedures and an apparent bias in favour of fellow officers combine to guarantee that even the most brutal police avoid punishment for serious violations until committing an abuse that is so flagrant, so unavoidably embarrassing, that it cannot be ignored.[34]

It clear, therefore, that ineffectiveness of oversight mechanisms internal to the police is not a problem unique to SADC countries.

Police standing orders

In most SADC states, the head of the police service is empowered, subject to enabling legislation and in consultation with or subject to the direction of the minister concerned, to issue standing orders with respect to the discipline, regulation or orderly conduct of the police.[35] For example, Standing Order 251 of the South African Police Service (SAPS) requires a member of the service to report a shooting incident, that an investigation into the incident should take place and that a shooting incident report is compiled indicating whether the degree of force employed by the police officer is legal or not.

Other internal mechanisms

Other oversight mechanisms internal to the police include disciplinary procedures (commonly provided for under police regulations), counselling systems, and recruitment and training.

In Angola, police officers may be subjected to disciplinary action in terms either of the Disciplinary Regulations of 1996 or a person's rights under the law if they are alleged to have committed a breach of duty. Possible sanctions may include reprimand, imprisonment without trial or dismissal from the police force. In Malawi, the Police Bill of 2003 establishes a standing National Police Disciplinary Committee and other police disciplinary committees subordinate to it. The functions of the former include the reviewing of the decisions of the subordinate committees and the hearing

and determination of appeals against these decisions. In South Africa, the Police Services Discipline Regulations of 1996 provide for an internal disciplinary system and procedures through which incidents of police misconduct are to be handled.

Counselling of police officers through post-trauma debriefing systems is employed within SAPS. This is considered an oversight mechanism in that it may influence the manner in which police officers use force. For example, excessive use of force may result if a police officer is traumatised by a particular incident or incidents. This system enables some evaluation of the police officer concerned.

As an oversight mechanism, police recruitment and training affects the functioning and accountability of police services. Thus, ineffective or poor training or selection of unsuitable candidates may contribute to poor policing practices.

External oversight mechanisms

Public prosecutors

In some countries, police officers have been prosecuted by the office of the Director of Public Prosecutions for their involvement in violations of human rights. In Angola and Mozambique, the Procurator-General (prosecutor) plays a direct role in the complaints process against the police and is able to receive complaints of police abuse directly or through trial procedures. It is notable, however, that the effectiveness of the public prosecutor's office as an oversight mechanism is often limited by a lack of resources and political will to prosecute in some cases.

Commissions

In a number of SADC countries (including Mauritius, Tanzania, South Africa and Zambia) human rights commissions have been established with broad human rights mandates, including the handling of complaints alleging violations of human rights on the part of the police. For example, in Zambia, the Permanent Human Rights Commission established in 1996 has the power to investigate allegations of human rights violations (including torture) by the police.[36] The commission may investigate on its own initiative or on receipt of a complaint or allegations by individuals or groups, or others acting on their behalf. However, its findings lead only to recommendations which have no legal force, although the government and its agencies are expected to act on them.

In Mauritius, the National Human Rights Commission established in 2001 has power to oversee internal investigations into complaints against the police. Other powers include referring human

rights violations or criminal offences to the Director of Public Prosecutions and visiting places of detention, including police stations.

Ombudsman offices

The office of ombudsman also provides independent oversight of police in some countries.[37] The ombudsman (who may be an individual or group of persons) has the primary function of protecting the rights of individuals who claim to be victims of unjust acts on the part of the public administration. An ombudsman receives complaints from members of the public and investigates these when they are within its legal competence. Typically, it will act as an impartial mediator between the aggrieved individual and the public body concerned. In addition to acting on complaints received, an ombudsman may commence investigations on its own initiative.

It is notable, however, that in some countries, the ombudsman is rendered ineffective by the lack of resources or by national legislation limiting its role. For example, in Botswana, the Ombudsman Act of 1995 prohibits the ombudsman from investigating any state security-related action or investigating crimes. In similar vein, Section 9 of the Zimbabwean Ombudsman Act prohibits the ombudsman from investigating any action taken by the president or his personal staff.

Botswana, Namibia, South Africa (Public Protector), Zambia (Commission for Investigations), and Zimbabwe all have ombudsman offices.

Complaints bodies

A number of SADC states have established independent oversight and investigation bodies. In South Africa, the Independent Complaints Directorate (ICD) established in 1997 may launch investigations into serious incidents – notably deaths in custody or resulting from police action – on its own initiative, or upon receipt of a complaint arrest police officers suspected of offences, and refer cases for prosecution. Other less serious complaints are referred to the police for investigation subject to monitoring by the ICD. It is also under a statutory obligation to submit regular reports to be tabled in parliament. A number of shortcomings have been identified, however, including that its executive director is appointed by the Minister of Safety and Security, who is also responsible for the police, and the ICD is funded by the Ministry.

In Zambia, a Police Public Complaints Authority established in 1997 has handled more than 800 complaints against the police since its establishment. However, the authority is only allowed to make recommendations. In Malawi, the Police Bill of 2003 establishes an Independent Police Complaints Commission to receive and investigate complaints by members of the public against police officers and the police service in general. The commission will

also investigate deaths or injury as a result of police action, and death and injury occurring in police custody

Police service commissions

Although police service commissions are generally established to look after the welfare and conditions of service of police officers, arguably they can play an important oversight role. For example, in terms of Section 55(2) of the Zimbabwe Police Act of 1995, the Police Service Commission may, after consultation with the national police commissioner, carry out an inquiry or investigation into the practices of the police force. There is a provision, however, that no evidence, documents, records or information may be obtained without the consent of the commissioner if it relates solely to "the nature of the investigations or prosecution of a particular criminal offence". This may impact negatively on the significance of the commission inquiry as an oversight mechanism.

Parliamentary committees

It is standard practice among the national parliamentary bodies within SADC and elsewhere to conduct business through, *inter alia*, permanent (standing) and ad hoc (select) committees. The main purpose of these parliamentary committees is to conduct inquiries into specified matters, which include receiving public submissions, hearing witnesses, sifting evidence, discussing matters and making recommendations. An important function of parliamentary committees is to scrutinise government activity including legislation, the conduct of public administration, and policy issues. They therefore can play a vital policing oversight role. Among others, the parliaments of Namibia, South Africa and Tanzania all have standing committees on matters relating to defence and/or security under the auspices of which the performance of the police services may be scrutinised. For example, in February 2005, the South African Parliament's Safety and Security Portfolio Committee held a strategic planning workshop which identified the need to develop a standardised monitoring tool for visits of police stations to ensure more effective and coordinated oversight.

It is worth mentioning the role of the SADC Parliamentary Forum Project – an externally funded initiative – which seeks to enhance the capacity for effective parliamentary oversight within the SADC region.[38]

Other policing oversight mechanisms in SADC

There are various other oversight mechanisms within the SADC states, including civil law suits, exclusion of evidence in criminal proceedings, inquests, media reports of events, and community policing forums.

Civil law suits are a common way of seeking police accountability. In many countries, individuals whose rights have been violated by the police can institute private legal actions against the police department or the state for compensation. The cost of private legal action is often prohibitive for many victims, however. This problem is compounded by the difficulty of obtaining, from the police, official evidence such as police station 'occurrence books' in which details of detained persons are recorded.[39]

While victims of police abuse of power deserve compensation, civil remedies are generally inadequate as an oversight mechanism as they never address flawed police management, policies or patterns of abuse, nor do they hold the individual errant police officer financially responsible for the injury occasioned.[40]

Another technique for ensuring police accountability is to be found in the rules regulating criminal procedure including arrest, detention, interrogation and the exclusion of improperly obtained evidence during criminal trials. By way of illustration, the South African Criminal Procedure Act 51 of 1977 stipulates the means of effecting arrest and procedures in obtaining search warrants, entering premises, and seizure or forfeiture of property connected with offences. Section 49 of the Act stipulates the degree of force to be used in effecting arrest. In some countries, such as Botswana, Malawi and Zambia, however, evidence (including involuntary confessions) is admissible as long as it is relevant.

In situations where a death is suspicious, an inquest can be held by a magistrate or other designated judicial official into the circumstances of a police killing at the request of the family of the deceased. Although such inquests can lead to the prosecution of police officers, this is not always the case. The purpose of an inquest is to establish whether a death was unlawful and, if so, to establish who was responsible. It is then up to the Director of Public Prosecutions to order the prosecution of those found to be responsible by the inquest.

Although they are not a formal oversight mechanism, media reports of police misconduct constitute an important supplement to oversight mechanisms such as investigations. In Zambia, for example, Amnesty International reported that many cases of police wrongdoing were brought to the attention of the Inspector-General of Police through media reports.[41] The Inspector-General then initiated investigations and, where necessary, prosecutions of the officers found responsible.

Mention must also be made of the possibility of community policing playing an oversight role. Although generally established for a different purpose, community policing plays an oversight function, albeit a limited one.[42] Community policing involves consultation between the police and local communities about police priorities. Community policing forums not only establish and maintain a partnership between the police and the local community but also promote communication and accountability of the police to the community.

In Malawi, the Police Bill of 2003 makes provision for community policing. In terms of Section 119 of the Bill, the police service must liaise with communities through community policing forums with a view, in part, to "improving transparency in the police service and accountability of the police to the community".

An innovative mechanism proposed in the Malawian Police Bill is the 'lay visitors' scheme. The objective of this scheme is to enable members of the local community to observe, comment and report on the conditions under which persons are detained at police stations, and to observe the operation and practical implementation of international and national standards governing the welfare of persons in police detention, with a view to "ensuring observance by police officers of the human rights of the detained persons and securing greater public understanding and confidence in policing matters".[43]

Finally, it is widely acknowledged that non-governmental organisations play a crucial role in the promotion and protection of human rights. Though they operate subject to different mandates they can play a crucial oversight role through documentation of police abuses, advocacy for police reform and providing human rights training for police officers.[44] Their role in relation to police accountability varies and is usually undertaken in cooperation with national bodies such as human rights commissions or ombudsman offices.

In Malawi, for instance, the Centre for Human Rights and Rehabilitation has taken up cases of torture and other abuses of power with senior police officers and the Ombudsman. In South Africa, the KwaZulu-Natal Campaign against Torture (a coalition of NGOs) monitored police holding cells in 2002 partly with a view to reducing the opportunities for torture of suspects by the police officers holding them. In Zambia, the Inter-African Network for Human Rights and Development (AFRONET), the Catholic Commission for Justice and Peace, and the Legal Resources Foundation have all played crucial monitoring roles which included the documentation of incidents of police abuse of power.

At the regional level, the Human Rights Trust of Southern African (SAHRIT) based in Zimbabwe has conducted a number of training programmes for police in the region in cooperation with the SARPCCO.

It should be noted that many non-governmental organisations in the SADC region tend to be poorly funded and generally lack the capacity to monitor abuses, particularly in rural areas. This militates against their effectiveness as oversight mechanisms. It is submitted, however, that such organisations should endeavour to focus more on other types of civilian oversight which are proactive and not exclusively concerned with police misconduct and are arguably less costly. Thus, for instance, they could focus on exercising influence and control over broader policing policy such as the making of senior appointments and setting of policing priorities.

Other global oversight practice:
Lessons for SADC states?

The oversight mechanisms overviewed here are not unique to countries within SADC. There are other models of civilian oversight mechanisms elsewhere in the world, however, which civilian oversight organisations in the region may wish to advocate. In the USA, for example, one model used is the 'auditor' approach.[45] Within this approach, individual citizen's complaints are received, investigated and finalised by the police department. The auditor conducts regular audits or investigations of the operations of the police department's internal complaints investigation procedures and issues periodic public reports in which they recommend policy changes. It is claimed that this process can serve to identify investigations that are flawed in some way (for example, if they are not thorough enough, or there is possible bias in the interview as evidenced by hostile questions to the complainant and leading questions to the police officer under investigation). Another positive aspect of auditor systems is that "they avoid the backlog problem experienced by many review boards with broad mandates to examine each complaint and conduct hearings".[46]

The auditor system has been criticised, however, on the grounds that auditors cannot assist an individual who wishes to institute a complaint but is apprehensive about approaching the police department concerned. Further, auditors do not generally conduct independent investigations or hold hearings. Consequently, their work must always be supplemented by other oversight mechanisms.

Another mechanism represents a form of 'appellate review' of complaints by members of the public in which individual citizen complaints are received, investigated and disposed of by the police department. If the complainant is not satisfied with the final decision by the head of the police department, he or she may appeal that decision to a civilian oversight mechanism.

As stated above, non-state (civilian) oversight involves people outside the police gaining access to internal police mechanisms in order to hold the police accountable for their actions and policies. In that there are some aspects of policing oversight that the police may be in a better position to handle than outside bodies, it is best that internal and external mechanisms be mutually supportive or complementary to each other. An example of such a blending of internal and external oversight mechanisms is the Office of Independent Review – a group of six civil rights lawyers established by the Los Angeles County Board with power to participate in and help direct the sheriff's department's internal investigations of complaints against its officers.[47] The group then recommends a way of addressing the problem and may also recommend disciplinary action where this is warranted. While it may be too early to assess the effectiveness of this model, it can be argued that policing oversight in the SADC region could learn some lessons here.

Most of the policing oversight mechanisms outlined above tend to be reactive; that is, they focus exclusively on police misconduct. In general, there are few examples of proactive approaches to policing oversight. Given the specific circumstances of civil society in the SADC region, including the dearth of resources, it may be worthwhile to adopt proactive approaches to policing oversight which focus on identifying and addressing the underlying systemic problems within police organisations in the region. The advocacy experience of many civil society groups, particularly human rights non-governmental organisations, places them in a good position to play a key proactive policing oversight role.

Conclusion

This essay has presented an overview of policing oversight mechanisms adopted around the world with a specific focus on those commonly employed in countries within the SADC region. It is important that in determining what policing oversight mechanisms ought to be used, and when, all possible alternatives of policing oversight should be considered and the most appropriate selected. Further, in view of the limitations of the various oversight mechanisms outlined above and the problem of lack of resources in the region, it is useful to fuse internal and external mechanisms so that they complement each other and arguably enhance the prospects for more effective policing oversight.

Any civilian oversight mechanism should place human rights at the centre of its activities. After all, policing oversight seeks to hold police accountable for the performance of their duties so as to prevent threats to, or violations of, the human rights of the citizens that police are sworn to protect and serve. In similar vein, the police ought to recognise the centrality of human rights in their policing function and to accept that police culture is not immutable and isolated from external influences. As Chris Patten, chairman of the Independent Commission on Policing for Northern Ireland (ICPNI), observed:

> We see the upholding of fundamental human rights as the very purpose of policing and we propose that it should be instilled in all officers from the start – in the oath they take, in their training and in their codes of practice and in their performance appraisal system.[48]

Notes

1 Internationally publicised examples include the brutalising of Haitian immigrant Abner Louima and the fatal shooting of African immigrant Amadou Diallo by the New York Police Department and the attempted cover-ups in the late 1990s, and the torture and ill- treatment, by six white police officers using vicious dogs, of three black Mozambican illegal immigrants in South Africa. See Patt Morrison, Déjà vu all over again, *Los Angeles Times*, 27 August 1997; and Graham Rayman, Code of silence challenge, Louima's lawyers

accuse NYPD, PBA, *Newsday*, 7 August 1998 (the police union was alleged to have conspired with certain police officers involved in brutalising a Haitian immigrant to frustrate an investigation). See also W K Rashbaum, After ex-officer's conviction, challenging the blue wall, *New York Times*, 5 May 2002 (a report concerning an attempted cover-up in a case where a New York City police officer who had been binge-drinking struck and killed a pregnant woman, her sister and her young son with his patrol car); and US Department of State, *Country reports on human rights practices for 2000: South Africa*, February 2001, <www.usemb.se/human/2000/africa/south_africa.html> (21 September 2005).

2   According to Human Rights Watch: "It is rare, indeed, for a police department, on its own initiative and without public pressure, to take steps to improve conduct and enhance accountability for officers who commit human rights violations. For this reason alone, citizen review is essential." See Human Rights Watch, Shielded from justice: Police brutality and accountability in the United States, 1998, <www.hrw.org/reports98/police/index.htm> (1 May 2005).

3   For example, Amnesty International has reported that "internal police disciplinary or investigation units for the most part are not sufficiently responsive to complainants". See Amnesty International, *Policing to protect human rights*, Amnesty International Publications, London, 2002, pp 5–6. Advocates of police reform have accused police organisations of being "hopelessly insular, endlessly self-referential, and mistrustful of outsiders". See M Bobb, Civilian oversight of the Police in the United States, <www.parc.info/pubs/pdf/SLUmerrickpaper.pdf> (1 May 2005).

4   The terms 'citizen oversight', 'civilian oversight', citizen review' and 'civilian review' are commonly used. Different kinds of oversight are referred to as 'procedures', 'mechanisms', 'systems', and 'agencies'. This paper uses the term 'civilian oversight mechanism'.

5   For a discussion of the various arguments advanced in favour of civilian oversight see Samuel Walker, *Police accountability: The role of civilian oversight*, Wadsworth, Belmont, Calif, 2001 (effectiveness of civilian oversight); Douglas W Perez, *Common sense about police review*, Temple University Press, Philadelphia, 1994 (enhances public confidence); and Jones, Newburn and Smith**,** Policing and the idea of democracy, *British Journal of Criminology* 36(2), 1996, pp 182–198 (democratic significance of civilian oversight).

6   Quoted in Colin R Cramphorn, Human rights and policing accountability, in *Policing and Human Rights*,

<www.psni.police.uk/prm_5-3-6cramphorn.pdf#search='history%20of%20policing%20oversigh> (27 April 2005).

7   See Walker, op cit; see also A Goldsmith and C Lewis (eds), *Civilian oversight of policing: governance, democracy and human rights*, Hart, Portland, 2000.

8   See Colleen Lewis, *Complaints against the police: The politics of reform*, Hawkins Press, Annandale, 1999.

9   See generally Goldsmith and Lewis, op cit.

10 See Report on oversight mechanisms of APD, <www.cabq.gov/council/abqrpt9.html> (30 April 2005).

11 S Walker & B W Kreisel, Varieties of citizen review, *American Journal of Police* XV(3), 1996, pp 65–88.

12 Police are said to adhere to an organisational 'code of silence' – the idea that "an officer does not provide adverse information against a fellow officer". See Human Rights Watch, Shielded from justice: Police brutality and accountability in the United States*,* 1998, <www.hrw.org/reports98/police/index.htm> (1 May 2005).

13 See Walker and Kreisel, op cit, pp 65–88. See also Human Rights Watch, Shielded from justice, op cit.

14 Perez*,* op cit, pp 76–81.

15 See Report on oversight mechanisms of APD, op cit.

16 Human Rights Watch, Shielded from justice, op cit.

17 See generally E Bittner, *The functions of the police in modern society,* Oelgeschlager, Gunn & Hain, New York, 1980.

18 See Report on oversight mechanisms of APD, op cit. See also Human Rights Watch, Shielded from justice, op cit.

19 Perez, op cit, pp 74–76.

20 See Richard J Terrill, Alternative perceptions of independence in civilian oversight, *Journal of Political Science & Administration*, 1980, pp 77–83.

21 Walker and Kreisel, op cit, pp 65–88.

22 International Covenant on Civil and Political Rights 1966, Article 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Article 2(1); and African Charter on Human and Peoples' Rights 1981, Article 1.

23 Article 13.

24 Application No 90/1997/874/1086, Judgment of 28 October 1998.

25 Application No 26772/95, Judgment of 6 April 2000.

26 Communication No 328/1988, Views of 20 July 1994.

27 Preamble to the Code of Conduct for Police Officials, Southern African Regional Police Chiefs Cooperation Organisation, August 2001.

28 Thus, for instance, the Special Law Commission appointed in 1999 to review the Malawi Police Act

recognised that the Act, which was enacted during the colonial era in 1946, was obsolete. The commission concluded that "the Act is ill-equipped to enable the police to effectively discharge the policing function in a democratic society". See Malawi Law Commission, Report of the Law Commission on the Review of the Police Act, Law Commission Report No 9, July 2003, p 7.

29 For example, Lesotho (Police Complaints and Discipline Office); Mauritius (Complaints Investigation Bureau); Namibia (Police Inspectorate and Regional Complaints & Discipline Units); and South Africa (Complaints Investigation Section and Inspectorate in the Office of the National Commissioner).

30 For an analysis of the South African Police Service's internal disciplinary system see G Newham, *Transformation and the internal disciplinary system of the South African Police Service,* Occasional Paper, CSVR, November 2000, <www.csvr.org.za/papers/papn.whm6.htm>

31 Police Act, Cap 13:10, Section 39.

32 These include Angola, Botswana, Mozambique ('police command inquiry'), and Zambia ('inquiry file').

33 Amnesty International, Policing to protect human rights, op cit, p 52.

34 Human Rights Watch, Shielded from justice, op cit.

35 See, for example, Zimbabwe Police Act of 1995, Section 9; Malawi Police Bill of 2003, Section 8(1).

36 Human Rights Commission Act 39 of 1996.

37 The powers and functions of the ombudsman are usually set out in legislation, for example the Commission for Investigations Act (Zambia); Public Protector Act (South Africa); and Ombudsman Act (Zimbabwe).

38 See <www.parlcent.ca/africa/southernafrica_e.php> (19 September 2005).

39 See Amnesty International, Zambia: Applying the law fairly or fatally? Police violation of human rights in Zambia, <http://web.amnesty.org/library/Index/ENGAFR63001199?open&of=ENG-2F3> (30 April 2005).

40 Human Rights Watch, Shielded from justice, op cit.

41 See Amnesty International, Zambia, op cit.

42 In South Africa, community policing was introduced in 1993 with a primary function of facilitating civilian oversight of police. However, research shows that while community policing forums have made an important contribution to building relationships between the community and the police, they have "neglected their key oversight role".

43 See Malawi Law Commission, op cit, p 88.

44 For example, the Kenyan Human Rights Commission, a non-governmental organisation with a broad mandate has been documenting complaints against the police, running public campaigns to promote police reform and educating officers on human rights.

45 Human Rights Watch, Shielded from justice, op cit.

46 Ibid.

47 See E Phillips & J Trone, *Building public confidence in police through civilian oversight*, Vera Institute of Justice, September 2002, p 4.

48 Quoted in Cramphorn, op cit, pp 5–6.

Canada as an international actor in Sudan

Alan Bones

Anticipating a new and fragile democracy in Central Africa

Thierry Vircoulon

COMMENTARIES

Canada as an international actor in Sudan

Alan Bones★

It may seem counterintuitive that Sudan should be the major foreign policy priority for Canada that it is. Historical linkages are not strong; the Sudanese ethnic community in Canada is small in number and trade volume over the years has been small. Yet, Canada plays an internationally recognised role in support of building peace in Darfur. Canada is one of the top three international donors in support of the African Union's Mission in Sudan (AMIS) to resolve the conflict in Darfur, with support totalling over $218 million[1] since September 2004. It also provides critical support for various peace-building and humanitarian projects, aimed at consolidating grassroots support for peace in a country plagued by conflict for generations.

This focus on Sudan had its genesis in the run-up to Canada's last term on the United Nations (UN) Security Council (1999–2000), when an analysis by the Department of Foreign Affairs suggested that

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three major conflicts on the African continent – in Angola, the Democratic Republic of the Congo and Sudan – threatened the entire continent's stability owing to the 'contagion effect' of the conflicts and the numerous countries they border. In addition, these conflicts diverted investment dollars available for development – making the humanitarian fallout of these conflicts an even more onerous task.

Canada has a 'whole of Sudan' policy, meaning that Canada recognises that all of Sudan's regions – and therefore the various conflicts in those regions – are interrelated. As the Sudanese national government's role in security and stability issues is key, it is important to recognise that actions and activities on one issue will inevitably have an impact on others.

The Canadian strategy with regard to Sudan is a three-track process, dealing with humanitarian, political and security issues. In Canada, we call this the '3D' approach – an integrated strategy involving diplomacy, development and defence, as articulated in Canada's International Policy Statement (IPS) released in 2005.

On the political side, Canada makes a strong effort to address root causes rather than symptoms. At the heart of most of Sudan's conflicts is what can be thought of as a 'centre-periphery marginalisation', since much of Sudan's national wealth has a tendency to flow to Khartoum without being redistributed to the country's underdeveloped rural regions. The negotiations sponsored by the Inter-Governmental Authority on Development (IGAD) – which cumulated in the Comprehensive Peace Agreement (CPA) that ended the southern civil war in January 2005 – were a critical effort towards resolving these feelings of marginalisation. As a result, the CPA makes an explicit effort to address power and wealth sharing in a united Sudan.

When Canada became actively involved in the Sudan peace process in the late 1990s, the IGAD process was faltering. Though talks were progressing, there was little forward movement on key issues. In an effort to work with the international community to speed up the process, Canada named a special envoy for the Sudan Peace Process in 1999 to act as a focal point for Canada's support for the IGAD peace talks and also provided critical funding to keep the talks secretariat functioning. This support complemented other humanitarian, peace-building and mine action contributions – together totalling $50 million between October 2003 and March 2005.

During the IGAD-sponsored talks, Canada remained cognisant that the post-peace rehabilitation of southern Sudan would require a massive and coordinated international effort. Critical on-the-spot full-time support was being provided by the United Kingdom (UK), the United States (US) and Norway, but it was unrealistic to expect these countries to shoulder the bulk of the post-conflict recovery load. As such, Canada focused on engaging a broad range of other middle-power countries and on widening the core of international support to include multilateral actors (notably the development banks) and international and national NGOs. The latter were especially critical for

consolidating national grass-roots support for the accord considering the somewhat exclusionary nature of the negotiations that were strictly between the Khartoum government and the Sudan Peoples Liberation Movement.

At the same time, on the humanitarian front, Canada participated actively through the UN to address urgent issues surrounding supplies of food (keeping in mind that the latter stages of the civil war coincided with drought in the region), basic health care, and other assistance to internally displaced persons and refugees.

In addition to these activities in the south, Canada became actively involved in the Darfur conflict when it erupted in 2003. Coming as it did when the end was in sight for the southern talks, it was critical that Darfur be considered by the international community in a direct and comprehensive manner, given the potential it had for derailing the IGAD talks on the south.

Canada's involvement in Darfur continued its historical three-track approach in an effort to solve the desperate humanitarian catastrophe in Darfur while at the same time providing support for the re-establishment of peace and stability in the region.

In May 2005, the government of Canada launched a major new initiative to support international efforts toward peace and stability in Darfur. As a result, Canada is one of the top three international donors to the African Union Mission in Darfur. Canada does, however, recognise the need for an all-of-Sudan approach and maintains support to the implementation of the CPA, as well as humanitarian support and peace-building activities throughout Sudan. These efforts combine input from the Department of Foreign Affairs and International Trade Canada, the Department of National Defence, the Canadian International Development Agency and the Royal Canadian Mounted Police.

Canada established a diplomatic mission in Sudan for the first time in 2000, as a sub-office of its embassy in Ethiopia, which retained accreditation for Sudan. This office was upgraded to a full embassy, effective early 2005. Additional support is provided through various other missions such as Abuja for the peace process; Addis Ababa for relations with the AU; and Nairobi for various aspects regarding liaison with southern Sudan. In addition, in May 2005 a special advisory team was created to coordinate and promote Canada's initiatives in Sudan.

Canada continues to provide support to the United Nations Mission in Sudan (UNMIS), which is supervising the implementation of the CPA, principally in South Sudan, and has deployed Force Headquarters staff officers and military observers to UNMIS.

At the UN, Canada has worked actively with other countries to ensure that the UN Security Council fulfils its responsibilities in addressing the conflict in Darfur. Canada plays an important

advocacy role with council members, including the development of a targeted sanctions regime, aimed at ending the violence in Darfur and making sure that all relevant parties in Sudan are held accountable.

The International Criminal Court (ICC) announced on 6 June 2005 that it will launch an official investigation to determine whether crimes within the jurisdiction of the Rome Statute have been committed in Darfur. Canada announced a voluntary contribution of $500,000 to support the ICC's activities in Darfur, and was the first country to make such a pledge. Humanitarian relief throughout Sudan is also a key priority for Canada, and at the Oslo Donors' Conference in 2005 Canada announced a contribution of $90 million, committed to humanitarian efforts, peace-building and support for the implementation of the CPA. Canadian humanitarian assistance to Sudan has been strategically focused to address gaps in the provision of basic needs and the protection for internally displaced persons (IDPs) and refugees. This includes food aid, shelter, water and sanitation facilities, as well as maternal and child health care. Canada has also allocated resources to protect civilians and to familiarise citizens with human rights standards and their use.

In a complementary process, Canada provides peace-building support for Sudan in five thematic areas: security; governance and participation; justice and reconciliation; economic and social wellbeing; and support to the peace process. Canada provides support for the Darfur peace talks through funds allocated for peace-building activities. The AU chairs the peace talks (held in Abuja, Nigeria) between the government of Sudan (GoS) and the two main rebel groups: the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM).

In Darfur Canada is providing military and technical assistance to AMIS to strengthen its capacity to monitor the ceasefire, to increase stability and to help ensure the protection of civilians. Canadian support is provided in response to specific needs identified by the AU. Canada has been actively involved in encouraging other countries to support this mission and in coordinating international assistance for it.

Canada's contributions include essential equipment to AMIS, including armoured personnel carriers (APCs), helicopters and tactical airlift, and will begin to provide a significant portion of necessary aviation fuel. Canada is cooperating with other international partners in various aspects of training, both specifically for Canadian provided equipment, and more generally for building the capacity of the AU forces. Expert deployments in support of the AU also play a key role in Canada's contributions. Canadian Forces personnel have been deployed to support AMIS and assist the AU to build capacity in strategic planning, logistics support and contract management.

A civilian police expert is deployed in Addis Ababa as a senior police advisor in the Darfur Integrated Task Force (DITF). Canada also provides support to the in-field civilian police component of

the AU mission and participates as a partner advisor in the Joint Logistics Operations Centre in El Fasher.

In concluding this overview of Canada as an international actor in Sudan, there are a couple of points that could be useful to highlight. Though Canada's actions in the country are motivated by a desire to assist, rapidly and effectively, in dealing with humanitarian and political imperatives, Canada's support has always specifically identified an integral and critical capacity-building element. It is not Canada's goal to come with a preconceived idea and an implementation strategy, but rather to respond to the needs and priorities identified by the key actors on the ground, such as the AU. In this respect, the AU deserves recognition of the politically courageous role it played in addressing Sudan and Darfur, despite the considerable challenges this implied.

Canada's '3D' approach is aimed at providing maximum value for its resources. Canada is looking forward to ongoing cooperation with Africa and their institutions in pursuit of peace and stability, and the development that brings, throughout the continent.

Note

1   All monetary values are expressed in Canadian dollars.

Anticipating a new and fragile democracy in Central Africa

Thierry Vircoulon*

The Democratic Republic of the Congo (DRC) became a constitutional state on 18 December 2005. The feedback on the electoral monitoring of the constitutional referendum by foreign-based organisations was positive, given, first, concerns about the possibility of holding the referendum as the legal and logistical infrastructure was put in place in a rush and, second, the many security uncertainties. Rumours of blockades and local revolts were many, and Etienne Tshisekedi's party

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(the Union for Democracy and Social Progress, UDPS),[1] now out of the government, but not out of the political landscape, was pointed out as a potential troublemaker.

After the successful constitutional referendum in December, it is now believed in diplomatic circles that organising the final elections – the legislative and presidential ones – scheduled for June will not be as difficult as originally expected. Nevertheless, one cannot ignore the fact that the referendum was far from perfect and that, even if the final elections happen on time, they only mark the beginning of the road to democracy.

The referendum ... now what?

The work that was done for the referendum is of great value and provides an administrative framework for the upcoming vote. The technical foundations for the next election are in place with a voters' roll having been set up, updated and tested, and the population having received its electoral cards, flowing from the December referendum.

In a country as huge and rural as the DRC, this in itself is a remarkable achievement. In this regard, the referendum was a technical test for the Independent Electoral Commission (IEC) led by Abbé Appolinaire Malu Malu. The IEC demonstrated to the donor community that it can run an effective election when it is asked and financed to do so. However, two imperfections are noticeable: there was no wide-reaching political education campaign before the vote; and the IEC has not yet published detailed results by polling stations. According to the Europian Union (EU) election monitoring report, the education campaign had a limited impact and some observers think that only the urban and peri-urban population voted. The urban/rural turnout split is not yet known. Furthermore, given high levels of illiteracy, together with an inadequate education campaign, the people who voted 'yes' (84 per cent) were not necessarily voting yes to the constitutional system, but were definitely voting for the end of the transition. In the DRC, as in other countries, the referendum vote is more than just the acceptance or rejection of a legal text, especially when there is a bit of confusion about the text itself. Indeed, at this stage, the constitution adopted by parliament differs from that published in the *Government Gazette*. The differences are not just about details: one of them is about the appointment of the prime minister. In one text, his or her appointment must be validated by parliament; in the other the president is absolutely free to choose whoever he or she wants. As a result, the DRC has a constitution, but we do not know exactly which one!

In terms of security, the vote proceeded quietly in most of the country, except for some well-known hot spots. There were localised incidents and sabotage in Eastern Kasai (the UPDS stronghold), in Northern Kivu (some electoral agents were taken hostage by the rebellious forces of Laurent Nkunda[2]) and in Kinshasa (some electoral material was burnt the night before the vote).

The way ahead

The two main steps preceding the national elections are the passing of the electoral law and the advancement of the security agenda. In February parliament was many months behind schedule in passing the electoral law which will decide on crucial issues such as the form of representation (proportional or majority) and the demarcation of electoral districts. Unlike the legislative process, the security agenda set up by the United Nations (UN) and the International Committee for Support of the Transition (CIAT) is far from being achieved or even being achievable before the June 2006 deadline for elections.

Securing the democratic election is a difficult business because it implies the achievement of many tasks that have been well known since 2004:

■ Starting the demobilisation and reintegration process of former militiamen (mainly Mayi-Mayi): In the DRC, the demobilisation, demilitarisation and reintegration (DDR) programme has started in Ituri where 15,000 militiamen were demobilised, but has not really started in other troubled areas (the Kivus, northern Katanga). And, given the operational delays for the DDR process, there is little chance that the programme funded by the donors can make a difference now.

■ Establishing an integrated national army (*Forces Armées de la République Démocratique du Congo*, FARDC) and police force:

The strategic plan for army integration that was released in May 2005 had three stages: the creation of light infantry brigades before the elections; the creation of a rapid reaction unit able to secure the election; and the establishment of a true defence force by 2010. Setting up ten integration centres revealed itself as too ambitious, with the result that only six of them were established with great difficulties (inadequate buildings, inadequate food supplies for the fighters, refusal to join the integration centres for political reasons,[3] and so on). So far seven brigades have been created, but the creation of an adequate national military force has been marred by a serious financial problem: the South African and European military census made it clear that the government announced three times more combatants than they actually have. As a result, the CIAT complained publicly last November about financial mismanagement in the army.[4] This problem of ghost soldiers is making foreign support for the future reconstruction of the Congolese army doubtful. As a result, the deployment plan is behind schedule.

■ In comparison with attempts to integrate the army, the creation of a national police force proved a bit easier. South Africa, Angola, France, the UN and the EU are involved in training the 'new' police force, but their activities have been largely located in Kinshasa. As a result, the other Congolese cities are still under-policed or policed by ambiguous and untrained forces.

■ Neutralising the 'negative forces' in eastern Congo (*Forces Démocratiques de Libération du Rwanda*, FDLR; National Army for the Liberation of Uganda, NALU; Rastas, etc) and securing the borders:

After the killing of nine peacekeepers in Ituri and given that the Hutu rebels (FDLR) did not disarm and demobilise as announced in March 2005,[5] it was decided to use tougher tactics to secure peace. Last year, both the UN forces and the Congolese army exerted military pressure on the 'negative forces' in eastern Congo. The first Congolese brigade was deployed in Ituri and chased away the local militias, while several operations were organised in the Kivus against the FDLR, NALU and more informal armed groups (such as the Rastas). With the support of the UN forces, the Congolese forces were also sent against the Lord Resistance Army (LRA) when some elements of this Ugandan rebellion crossed the border in the Eastern Province last October. In all these operations (except for the anti-LRA operation in last February when eight UN soldiers were killed) the Congolese forces took the lead while the UN forces played a supportive role (logistics and airforce backup). These military operations proved difficult for the FARDC as they are quickly reaching their operational limits, and are not paid regularly or provided with the necessary resources to fight (the combination of these negative elements led to the disintegration of the 5th Battalion). As a result, some have gone back to their old behaviour of deserting, harassing the local population and raising illegal taxes.[6] Their lack of discipline is obvious and, because of ethnic cleavage, some troops have been fighting against one another since 2004 in the northern Kivu region. Moreover, it is doubtful whether the current strategy against the negative forces in the Kivus (pushing them back into the forest) and the hunt for Gedeon, the Mayi-Mayi chief in northern Katanga, will produce a long-term peace even if they prove successful.

Unlike the referendum, national and local power is at stake with the next two elections. Given the slow progress in securing the Congolese territory, the next two elections may be less peaceful than the referendum, and real political competition may lead to violence and human rights abuses.[7] The security threat remains high in the Kivus and Katanga and in the main cities (Kinshasa, Goma, Bukavu, Mbuji-Mayi and Lubumbashi). As a result, the international community is at present working on an 'emergency plan' for securing the elections. In February, the Department of Peace-keeping Operations of the UN requested the military support of the EU for the electoral period.

Thinking beyond the transition

At this stage, all energies are very much focused on ending the transition phase and organising the national elections before July. June 30th is the deadline for the transition process: after this date, the Secretary-General of the UN has highlighted that there will be no legal basis for the current

regime. But the focus on the election deadline must not hide the challenges that will face the DRC the 'day after' the elections.

Paradoxically, the day after the final election the DRC will be even more fragile than before. The 16 parties operating in mineral-rich Katanga support the establishment of a federalist political system; the Union of Congolese Federalists (*Union des fédéralistes congolais*, UNAFEC), the main student movement in the province, has already been very vocal against the non-natives, that is to say the Kasaians;[8] and according to the government, there was a secession attempt in April 2005. In the Kivus and Maniema, the position of the Banyamulenge in Congolese society will remain a problem and the predatory mining system benefiting many political actors, including the Rwandan government, will be left intact.[9] Moreover, a lot of local land and trade conflicts are still pending and could easily be manipulated by external spoilers. As none of the security problems listed above will be solved before the elections, the new democratic government will have to deal with a legacy of security threats stemming from unsuccessful attempts at demobilising the militiamen, uncontrolled armed groups, disgruntled politicians and hostile neighbours. Once again Ituri is a case in point: it is here that the UN peacemaking strategy has been the most coherent and effective (militiamen have been demobilised, local commanders have been arrested, and Ugandan interference has been kept to a minimum). Yet the militia threat is still there ('lost' soldiers have merged and formed a new rebellion called *Mouvement révolutionnaire congolais*), the gold, arms and wood trafficking carries on despite government control, and governance has not really changed in the district as the FARDC have just replaced the militiamen as the forces harassing the civilians.

But the most worrisome element is probably the way Kabila's government has acted during the transition. It has shown a minimal commitment to democracy, rule of law and good governance. During the past three years, the CIAT and the UN had to pressurise the government in order to get the laws passed, the army restructuring process started, and the electoral process put on track. The transition government missed the first deadline (June 2005) to organise the national elections. Even getting a warrant against well-known militia leaders involved in infamous killings was difficult because domestic politics and corruption undermined the rule of law. Several attempted coups happened during the transition period, and weapons and militias are available even in the capital (the last clash happened on 3 March between *Mouvement pour la Libération du Congo* bodyguards and presidential guards who discovered weapons in a house belonging to the MLC). Furthermore, the Congolese political class is composed of many people whose unique background is their position as former militia commanders (for instance Thomas Luhaka, who on 2 March unsuccessfully appointed himself Speaker of Parliament). The governance record of the transition government demonstrates very weak ownership of the state-building process and not much commitment to democracy and the rule of law. For example, parallel chains of command are put in place in the 'restructured' FARDC by the political parties. Owing to their position of dominance, the political actors running the transition process will probably be the leaders of the new democracy. But the

difference between today and the day after the elections is that the international community will no longer be able to exert as much leverage on the democratically elected government. That is why it is urgent to think beyond the elections.

Haiti, Sierra Leone, Liberia, Afghanistan and the Balkans have shown that, in many war-torn countries, problems persist after internationally sponsored elections. Elections are not an end in themselves, especially when they are organised under the pressure of the international community. The organisations and countries that have played a key role in supporting the peace agreement and the political transition in the DRC should elaborate post-elections scenarios in order to anticipate possible future outcomes so as to find a common and appropriate democratic support strategy. Will it be reasonable to leave the newly elected government to face possible internal and external security threats alone? Should the UN forces be withdrawn as soon as possible, or much later, as in Liberia where it was decided to leave the UN troops as a stabilising force for three years in the country in spite of the democratic election of the new government? Must they be replaced by forces from the AU or the Southern African Development Community (SADC) that would only focus on the 'hot spots' in the DRC? Must there be some sort of diplomatic monitoring tool of the new Congolese democracy as the CIAT is? Must the CIAT be dismantled or restructured to become the coordination mechanism of the main donors? Of course, the answers to these questions depend on the most likely scenarios post-elections.

At this stage, the international community is helping to prepare for the final elections (the EU has agreed to send a stabilising military mission for the electoral period in order to reinforce the UN peacekeepers) but, given the legacy of many unsolved problems that the next Congolese government will inherit, this important step must not be regarded as the end of the road: after the elections, the job will be to consolidate democracy and, in the DRC, at this stage it cannot be done without a stabilising force. Just as the signing of the Sun City peace agreement in 2002 was not the end of violence, the presidential elections may not be the end of the political turmoil.

Notes

1 Etienne Tshisekedi, former prime minister of Mobutu Sese Seko, is running the main opposition party, which is composed of Kasaians.

2 Laurent Nkunda is a dissident commander operating in Northern Kivu.

3 For instance, the *Rassemblement pour la Démocratie au Congo-Goma* refused to release soldiers for deployment to the Kitona integration centre for training.

4 CIAT press statement, 25 November 2005.

5 The FDLR announced in March 2005 that they were renouncing their armed struggle, but the hardliners rejected the peace agreement and the 'European' leadership of the movement was contested by the local commanders.

6 The behaviour of the FARDC in Ituri is a case in point: several demonstrations were organised by the local population to protest against their harassment, the army auditor of the brigade was discharged for theft, and the officers are exploiting the gold mines as the militias used to do.

7 In November, the editor in chief of the newspaper *La Référence Plus* (Franck Ngyke Kangundu) and his wife were killed in an execution-style murder in Kinshasa.

8 In 1992 the Katangans killed over 5,000 Kasaians in a wave of ethnic cleansing.

9 See R Pourtier, L'économie minière du Kivu et ses implications régionales, INICA report, 2004, p 59.

Amateur soldiers, global wars: Insurgency and modern conflict
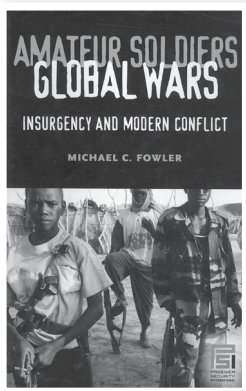Michael C Fowler

The last 100 days of Abacha:
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Olusegun Adeniyi

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BOOK REVIEWS

Amateur soldiers, global wars: Insurgency and modern conflict

Michael C Fowler

Michael Fowler's book *Amateur soldiers, global wars: Insurgency and modern conflict* is probably one of the few comprehensive attempts at seeking a thorough explanation of the nature and character of current conflicts in the world. These have generally characterised the 21st century so far and are typified by the attack on the Twin Towers on 11 September 2001.

In this well-written scholarly piece of work, Fowler begins by making an argument for what he sees as global insurgency. He follows this by examining other pertinent issues to the challenges of the contemporary conflict such as leadership and mobilisation; role of intelligence; and the issues of funding, procurement and training of this modern warfare. Fowler also presents a conceptual

framework for global insurgency and finally provides a case study of the generally acknowledged prima donna of global insurgence – Al Qaeda.

In making the case for global insurgency, Fowler provides the synopsis of his entire thesis. Its most significant aspects include an appraisal of the nature of war, which he describes as politically transitional with a scope of operation that is global, and a war 'without rules'. He identifies a triad of principal actors in the insurgency as *issue organisations*, *groups* and *constellations*. It is, however, his handling of the critical definitional matter of terrorism and the distinction he makes between terrorism and global insurgency that stands out as most informative. Fowler handles this rather delicate definitional issue throughout the book in a manner that shows sensitivity while leaving little doubt of how it should be handled.

In the 'Leadership and mobilisation' chapter, Fowler shows that intervention of leadership and mobilisation is greatly influenced by the development of communication technology. The book argues that broad facilities provided by advancement in communication technology enable a worldwide reach by issue organisations and thereby facilitate transnational support for human-focused agendas. Leadership is regarded as the essential bonding and (motivation) of operationalising the common agendas by the issue organisations. However, Fowler observes that its ability to retain anonymity lies in adopting a relatively flatter hierarchical structure. In this regard he correctly observes that the decentralised approach has its own disadvantage such as "little flexibility to adapt to local situations in a timely manner".[1] Nevertheless dispersal (a component of decentralisation) enhances the survival of insurgents and the ability to wage war. However, Fowler is not accurate in viewing the practice of dispersals as inimical to "accepted practice of conventional warfare".[2] He is nonetheless correct when he argues that dispersal enhances successful insurgent operations. Indeed, so too does it serve conventional militaries in given environments.

Fowler also raises important issues regarding defining an adversary and determining where and how the operations are being conducted. It is needless to mention that obtaining answers to both questions is complex, tedious and in some cases even impossible. I find Fowler's suggestion that defining the adversary would require seeing who else is engaged in a similar activity is not so straightforward as it may sound. For instance, this may not protect one from a new entrant with original strategies and tactics. The same may be said of the 'where' and 'how' questions. However, his conclusion that despite the relatively smallness of the insurgent's global logistics, it is just as effective as the larger ones of conventional forces, is instructive. The identification of cities and ports as 'new battlefields' in the chapter 'Global insurgency warfare' is not 'earth-moving', but nevertheless brings to the fore the vicious nature of the battle being fought by 'amateur soldiers'. It is also necessary to point out that making statements such as "Taliban defeated in Afghanistan" and "Al Qaeda is on the run with US forces in pursuit" smack of value-laden analysis in the face of

evidence which suggests that the situation may not be so clear-cut. I have nevertheless found his handling of the 'intelligence' and 'A theory of global insurgency' restorative.

I find Fowler's coverage of intelligence issues to be accurate to a fault and serves well to both the professional and non-professional in the fields of the 'unknown' amply described by the author as "a strange animal". Indeed, even with a full range of intelligence efforts – that is, open source intelligence (OSINT), imagery intelligence (IMINT), signal intelligence (SIGINT) and human intelligence (HUMINT) – in the case of global intelligence, HUMINT remains critical in the event that an individual target "withdraws from using technology to avoid being tracked".[3] What cannot be avoided is meeting the cost of the intelligence effort. Fowler attempts to address this matter in the chapter 'Funding, procurement and training'. Here he provides a rather comprehensive analysis of how insurgents sustain their operations globally. However, stating that funding of the operations is done through legitimate and illegitimate means, and in permanent, semi-permanent and non-permanent ways, can hardly be revelation of new ground.

What is significant in Fowler's book is the meticulous detail of the often 'grey' and even 'dark' environments only characteristic of shady operations of the likes of intelligence and insurgency activity that nonetheless demand appropriate training but largely depend on dedication. With the coverage of such issues as the Oklahoma City bomber, the Tokyo subway nerve gas incident, activities by the Revolutionary United Front (RUF) in Sierra Leone, and uranium trafficking from Uzbekistan into Afghanistan, the ability to buy anything is unlimited. Fowler's own statement: "Anything can be bought or gotten somehow. Much that could not be bought can also either be made or stolen,"[4] underlines this. Indeed improved understanding of this shadowy activity requires a well-grounded conceptual interrogation. Fowler provides this in the chapter on 'A theory of global insurgency'.

There are few books of practical significance with room for theory. Fowler's book is one. Motivating for theory, Fowler argues for a departure from describing what exists and opting for seeking meaning. His argument that insurgency is not as constant as conventional warfare makes a conceptual drive all the more vital. He does this by placing and interrogating a number of questions. One of the pertinent ones concerns defining the concept 'terrorism'. I have found his packaging of the concept as *subjective* and *objective* and ultimately opting for the usage of the term 'insurgency' absolutely scintillating. The way in which he handles questions whether the war with insurgency can in fact take over a country or indeed the world makes for interesting reading. In discussing these issues, Fowler provides the historical content and in that way provides depth to the crucial issues. In the final analysis he argues correctly that insurgency, albeit conducted by the so-called amateur, cannot be dismissed and that the future lies in cooperation between governments and people.

Fowler's book is therefore a 'must read' for all working on issues of peace and security and probably an essential one for the rest. Eradication of insurgency/terrorism requires a partnership of all and

sundry because of what Fowler recognises as "thoughts, perceptions, and how governments solve problems rather than anything physical".[5]

Dr Naison Ngoma

Notes

1   M C Fowler, *Amateur soldiers, global wars: Insurgency and modern conflict*, Praeger Security International, Westport, Conn, 2005, p 49.

2   Ibid, p 50.

3   Ibid, p 73.

4   Ibid, p 103.

5   Ibid, p 155.
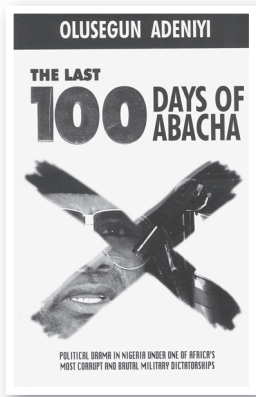
The last 100 days of Abacha: Political drama in Nigeria under one of Africa's most corrupt and brutal military dictatorships*

Olusegun Adeniyi

After years of colonial-settler rule, one-party-state dominance and military dictatorships, the new African democracies of the 1990s are struggling to foster stable and predictable transfers of power.

Exactly where does the problem lie? Current evidence seems to suggest that the characteristic is most evident within the ruling parties as well as the competing political parties. The failure to generate predictable changes in government has created a new sense of insecurity that threatens to draw the African continent back to the days of chaos and democratic immaturity. Examples of political infighting culminating in regressive democratic development have been witnessed in Algeria, Zambia, Malawi and Kenya, to name but a few. Over the next five years, two of Africa's nascent democracies, South Africa and Nigeria, are scheduled to witness the departure of the

current leaderships in line with their constitutional mandates: Presidents Thabo Mbeki and Olusegun Obasanjo, respectively. However, in both countries, in anticipation of their departure, we have already noticed upheavals within the ruling parties of the African National Congress (ANC) of South Africa and the People's Democratic Party (PDP) of Nigeria. More specifically, the ructions within the ruling parties have split the movements into two warring factions – behind the incumbents on the one hand and their deputies on the other. This division of the ruling parties in both countries has serious implications for the smooth handing over of power.[1]

In Nigerian political circles, there is already serious jockeying for a third term[2] versus the departure from office of President Olusegun Obasanjo. The political tussle has divided supporters and detractors into two camps. Meanwhile, a macabre drama is being played out between Olusegun Obasanjo and his deputy – Atiku Abubakar – in which Obasanjo has publicly accused his deputy of dishonesty and treason. Subsequent to this announcement, Obasanjo suspended Abubakar from his official duties. The same treatment was meted out to Abubakar's closest aides, eight of whom were physically barred from Aso Rock.[3]

The differences between the president and his deputy has split the ruling party, the PDP, with those lining behind Abubakar preferring to create new parties – the Movement for Democratic Change (MDC) and the Movement for the Restoration of Democracy (MRD). As 2005 came to an end, the MDC and MRD merged into a single entity to challenge the PDP.

It is against this background that Olusegun Adeniyi's contribution to the discourse, *The last 100 days of Abacha: Political drama in Nigeria under one of Africa's most corrupt and brutal military dictatorships*, emerges as a timely reminder of the fragility of the stability of African democracies. At stake is the larger question on how smooth the political transition is going to be in Nigeria when the current incumbent leaves office.

This Day newspaper is a familiar tabloid to South Africans, who will recall its circulation before it folded at the end of 2004. The main reason for the paper's spectacular collapse in South Africa was financial. Meanwhile, Adeniyi is the current editor of *This Day* as published in Nigeria. In *The last 100 days of Abacha*, Adeniyi's pitch is barely disguised. This is a book advocating the departure of Obasanjo the minute his current term ends. The book represents the conviction of the 'no-third-term' faction, written in the form of an analogy, using Sani Abacha's reign as a case study of how not to cling to political power. There is also unmistakable evidence of Adeniyi having used his journalistic and editorial privilege to make the point – a position that he had earlier eloquently made in his piece published in *This Day,* entitled 'Aso Rock cardinals and the 2009 Conclave' of April 2005. This had strongly argued for the abandonment of the "self-perpetuation of the presidency".[4] The argument advanced in *The last 100 days of Abacha* are therefore a sequel to the message that Adeniyi had put out earlier, during the first quarter of 2005. Adeniyi's role also tells us is that he already enjoys what may

be referred to as a 'captured audience' comprising people who read the newspaper every day. Upon this group Adeniyi has unleashed the advantages of "journalism as a weapon of political intervention", arguing for them to reject exhortations for Obasanjo to continue in office after 2008.[5] The book appears to have received widespread advertising, especially in *This Day*. The advertising has no doubt occurred through Adeniyi's presence and influence on the editorial board. What remains in doubt, however, is the question whether or not the message has made an impact amongst opinion-makers.

The book is organised in six chapters in which one is confronted with short, diarised presentations, mostly of a page or page and half each, that sometimes detract from the unfolding story. It is printed in a largish style, making it an easy airport read. The sourcing and style of the book is based on three elements: regurgitating newspaper articles that appeared in five national newspapers at the time of Sani Abacha's reign; Adeniyi's own writings during that period; and, finally, information from the diaries which he kept on State House meetings and briefings during this critical era of Nigeria's politico-military history. The six chapters are hemmed in by two contributions by selected individuals: a foreword by an academic luminary and a postscript by a retired colonel. Not surprisingly, both are scathing in their views of political attempts by Obasanjo and his supporters to remain in office.[6]

While the book has been a major success in raising and drawing our attention to the machinations around the scheduled political transition after 2007, it is a huge disappointment if one is looking to understand how the late General Sani Abacha and his wife, Myram, *actually* conducted themselves during the last 100 days in office. To this end, the book fails to even provide a basic profile character or biographical history of the main character(s). Instead, it portrays the political parties, traditional associations, actors and groups around the presidency, appearing to be doing his bidding and yet carrying out an agenda of their own self-interests. The discussion is couched in a manner that has resonance with what is taking place around Obasanjo in the current tense political climate. For instance, the analogy identifies particular groups, such as the appropriately named Youths Earnestly Ask for Abacha (YEAA) '98, and the traditional leadership conventions, based on the three main ethnic groups – the Hausa, Ibos and Yoruba – whose aim is to maintain an ethnic balance and unwritten rotation of the presidency. All these features have returned to the Nigerian political landscape in the twilight phase of Obasanjo's reign. Because the text ignores paying attention to the actual rule by Abacha, it is a major let-down on failing to provide us with insights into the military dictatorship – government machinery that Obasanjo took over from Abacha. How this was/has been reformed and to what extent have undemocratic facets given birth by Abacha remained? Finally, this approach would have provided a perspective of what motivates incumbents to seek to perpetuate themselves in the presidency and what measures can be put into place to dissuade future incumbents from following this trend.

Adeniyi makes what we believe is an important contribution to the discourse, through the special section that examines the myths linking military officers as credible crucibles for introducing/

entrenching democracy, arguing for a radical re-think. Across both factions, for and against Obasanjo, are important believers, holding in reverence the military tradition as a pre-condition to political office. In the political discourse, many appear mesmerised and support, without question, military officers who have aspired for political office. The militaristic notion held by the cross-party adherents belittles any 'civilian' presidential aspirant challenging the politico-military hierarchy. The strong sense of militarism in Nigeria appears to have gained currency during Sani Abacha's reign. At the time, his press officers were wont to liken him to the messiah, similar to George Washington in America, Dwight Eisenhower after the Second World War, Charles de Gaulle in France, the Egyptian Colonel Gamel Abdel Nasser, Ghana's Jerry Rawlings, or even Indonesia's Suharto. In this section, there is what we can only call an adroit summary of Oliver Cromwell's life and times in challenging the monarchy, his service in the military and operational experience in Ireland, confronting the hierarchy within the Church of England and parliament between 1638 and 1645. In the episode, Cromwell as a military officer, through his actions continually posed the question as defined in the heading of the chapter – 'From barrack to Presidency: Is it true?'[7] In drawing parallels from this experience, the understanding of the pro-Obasanjo faction argues that, Cromwell's contributions were to result in the 'healthy' challenge of the monarchy, the Church and parliament to result in a new model army that was the cornerstone for the future British democratic traditions and civil military relations. This conclusion had emerged from his intervention in motivating for the ordnance to control the army in October 1641 and finally, in his personal involvement in parliamentary affairs while still serving as a lieutenant-general in 1644/45. Cromwell's intervention appeared to have enjoyed the support of the then sitting army commander, General Sir Thomas Fairfax. In a chapter covering only nine pages, Adeniyi has done an excellent job in drawing out the different dimensions and flaws of feudal England and oil rich Nigeria, making the conclusion that "apostles of the Cromwellian model [were] nothing but political jobbers who ha[d] enlisted the services of intellectual mercenaries to foist upon the nation palpable ignorance".[8] As can be noticed, the language used by the different factions in the Nigerian political struggle reflect strong and cutting barbs, leaving minimal space for moderation. However, in drawing this militarism parallel to the Nigerian case study, Adeniyi has successfully destroyed the assumption rooted in relying upon military officers for political leadership roles and in the process wins back space for civilians to recover their dignity and conviction of qualification for the highest office in the land.

In conclusion, *The last 100 days of Abacha* draws our attention to Africa's Achilles heel – that it is a continent replete with states lacking the tradition of political succession in which periods of political succession denote instability and insecurity. Whereas the first generation of political leaders were never compelled to consider leaving office, the current crop has been caught unawares and are forced to contemplate a future out of office – if not in jail, then at the mercy of the incoming leader. Stated differently, political infighting amongst power-seeking individuals within ruling parties and competing political parties has further weakened what should have been maturing democracies. This trend is as a result of a number of interlocking factors. The first is the sense of insecurity of

outgoing leaders currently in power. As a consequence, many have felt it imperative to mortally wound their would-be-successors while still in office. A related option, of the seeming insecure incumbents, has been an attempt to anoint/appoint their successor, for reasons that are still not too clear. Second, the phenomenon has been allowed to fester because political parties have been reduced to personal entities, bereft of mechanisms to operate beyond the individual. If we are correct in this assumption, then it is urgent that ruling parties have in place mechanisms and procedures regulating internal party succession. Finally, the hybrid liberal democratic model that African constitutional experts have imbibed – collapsing European and American models in the new liberal frameworks that now 'enforces' departure of political leaders after two terms – have also exposed the continent to frequent upheavals over succession. This has occurred well before the new democracies have had an opportunity to mature and consolidate. Until ruling political elite reconcile themselves to the inevitable process of succession, even within their own political parties, then Africa will continue to be dominated by unstable and insecure periods as Adeniyi has tried to show for Nigeria. In the next few years, it will be interesting to watch the transitions in the new democracies of South Africa and Nigeria.

Dr Martin R Rupiya

Notes

1 Based on public media reports in both countries, there is perceived to be strained relationships between the principals and vice-presidents, Jacob Zuma in the case of South Africa and Atiku Abubakar in Nigeria. Apart from the introductory comparative examination of the ANC and the PDP, this paper will focus on the latter as part of this review.

2 Yusuph Olaniyonu, 3rd term what we require from Obasanjo, *This Day*, 11(3881), 6 December 2005, p 88; See also Ike Abouyi, Obasanjo halts northern speakers meeting, *This Day*, 11(3881), p 7.

3 Nigeria's military and political elite reside in the exclusive village of Aso Rock. This also houses the presidential State House.

4 Introduction, pp wvii–xix.

5 Foreword by Dr Reuben Abati, p xii.

6 Quotation: "Col Abubakar Dangiwa Umar (rtd) contributed this piece, [postscript] at the request of the author," p 236.

7 O Adeniyi, *The last 100 days of Abacha*, pp 201–209.

8 Adeniyi, op cit, p 203.
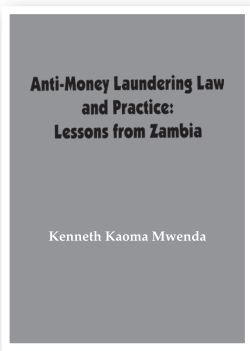
Anti-money laundering law and practice: Lessons from Zambia*

Kenneth Kaoma Mwenda

The publication of Dr Mwenda's book could not have been more timely. It emerged on the eve of the annual meeting of the East and Southern Africa Anti-Money Laundering Group of countries (ESAAMLG), in Livingstone, Zambia.

The objectives of the book and its structure are set out in the preface. The book "examines the efficacy of the institutional and regulatory framework for combating money laundering in Zambia", and in so doing, seeks to expose some of the weaknesses of this framework. (It is unfortunate that the book is not neatly divided into distinct chapters or sections, as this would have made the transition between subjects easier.)

From the beginning, Dr Mwenda, relying on texts from the International Compliance Association, rejects the perception that money laundering is a three-stage process of placement, layering and integration. In the introduction, he sums up the rationale for combating money laundering. Several of these factors are valid, but the author risks spoiling the argument by including factors of questionable validity. Prominent among them is the contention that "[m]oney laundering can lead to loss of government revenue where tax evasion, as a predicate offence, is rampant in the country".

In rebuttal, it can be said that even then money laundering is not the cause of tax evasion.

I am not familiar with the legislative processes around the enactment of the Prohibition and Prevention of Money Laundering Act of 2001. I would, however, take issue with the author's assertion that the Act was influenced by the numerous instruments and declarations listed on pages 12 and 13. The content of the statute does not bear testimony to this. Be that as it may, the related statement that the Zambian legislative and institutional framework for combating money laundering is informed by "models of European legislation and regulatory rules, including some of the best practices found in developed countries such as the United States of America" needs to be evaluated.

Since the European and American models predated Zambia's infrastructure to combat money laundering, they serve as benchmarks, or the source of standards by which to evaluate it. It would have been useful for the author to set out the basic framework(s) in the models that influenced developments in Zambia. He could have identified their benchmarks before evaluating Zambia's laws and institutions. The author opted for a different course, however, and, after a brief statement of the shift from treating money laundering as a narcotics-related crime to regarding it as a crime derived from other activities, analyses the Prohibition and Prevention of Money Laundering Act of 2001.

Dr Mwenda's analysis is useful in that it shows that the Act was hurriedly put together and did not cover all the aspects that it should have addressed. Even the continued vesting of investigative powers in all money laundering cases in the Drug Enforcement Commission appears to have been a convenient cop-out, given the acceptance that drug trafficking was not the sole crime predicate to money laundering.

However, the failure to revolve the analysis around a set of benchmarks detracts from its completeness and clarity. It is widely recognised that modern anti-money laundering systems (regimes) are characterised by two complementary but distinct pillars – the prevention pillar and the enforcement pillar.

The prevention pillar seeks to deter criminals that have acquired the proceeds of crime from using institutions (in all sectors) and individuals to convert or move the proceeds around. Reuter and

Truman in *Chasing dirty money: The fight against money laundering* (2004) analyse the four constituent elements of prevention, which manifest themselves as obligations imposed on vulnerable institutions and individuals. They are customer due diligence; reporting obligations; submission to supervision; and sanctions for non-compliance.

The author devotes a great deal of attention to a discussion of the prevention pillar in Zambian law (pp 76–99) and offers some critical commentary on its shortcomings. It would have been useful if examples of implementation had been given, however.

The primary objective of enforcement is to punish criminals who attempt to breach, or succeed in getting beyond, the established preventive infrastructure. This pillar comprises the following aspects:

- criminalisation of certain underlying (predicate) activities;

- investigative infrastructure that complements detection by vulnerable institutions or forensic analysis by financial intelligence units;

- asset tracing and seizure of proceeds of crime through civil law action;

- prosecution and punishment; and

- asset confiscation following a criminal trial, or through civil process.

The book goes into some detail on the predicate activities yielding money for laundering. It is not so comprehensive on the investigative structures established to probe predicate offences or to follow the trail of laundered assets. This may be because the Act does not elaborate on these aspects, assuming that the conventional institutions and usual powers vested in law enforcement agencies are adequate.

In contrast, the author discusses two propositions relating to proving money-laundering offences. He strongly argues that there should be a shift in both the burden and standard of proof currently imposed on the prosecution. On the basis that the investigation and prosecuting institutions in Zambia are severely under-resourced, the burden to prove that suspect assets are not tainted should be imposed on the accused. This reversal should be entrenched in the constitution (to save it from judicial nullification) and extend to money laundering, drug trafficking and corruption. At the same time, the standard should be beyond reasonable doubt. The author argues, as an alternative proposition, that if the burden remains on the prosecution, the standard should be ameliorated to proof on a balance of probabilities. This would "remove the onerous and strenuous task on the

prosecution, especially given that law policing and criminal investigation offices in Zambia are understaffed and have limited resources at their disposal". The author's arguments in support of these propositions are not at all convincing. The assumption that in cases of money laundering, corruption or drug trafficking, the accused is always a professional criminal, while poor resources hamstring the prosecution should not be made casually. This assumption overlooks the extremely wide definition of money laundering adopted by the Act. It also overlooks the practical challenge of requiring a person suspected of possessing illegal wealth to explain his or her acquisitions, regardless of how far back in the past they may have been acquired. The author does not acknowledge the existence of the unexplained wealth provision in the old Corrupt Practices Act of 1980 and its retention in its successor, the Anti-Corruption Commission Act of 1996. It would be interesting to obtain his views on the implementation of the provision in corruption cases to date.

Money laundering in the form of placement of illicit assets in the economy probably precedes the processes of conversion or transfer referred to in Article 6 of the UN Convention Against Transnational Organized Crime (2000). The preventive pillar of anti-money laundering regimes emphasises regulation of institutions (financial and non-financial) to compel or enable them to profile the parties with whom they transact business, or who do business through them. Beyond profiling, and indeed as a result of it, financial institutions are required to detect and report activities that may indicate unlawful acquisition of the assets placed with them.

Identifying indicative factors of money laundering should take account of all the forms that are envisaged in the definition. As money laundering includes acquisition of proceeds of crime, the incidence of the underlying economic crimes is an indicative factor, regardless of the fact that the assets may not have been, or even intended to be, placed into the formal deposit-taking institutions of the economy. The sum total of the proceeds of the activities listed above should give an indication of the scale of money laundering in the form of unlawful acquisition of assets.

Money laundering in the form of placement of illicit assets in the economy probably precedes the processes of conversion or transfer referred to in Article 6 of the Organized Crime Convention. The preventive pillar of anti-money laundering regimes emphasises regulation of institutions (financial and non-financial) to compel or enable them to profile the parties with whom they transact business, or who do business through them. Beyond profiling, and indeed as a result of it, financial institutions are required to detect and report activities that may indicate unlawful acquisition of the assets placed with them.

Charles Goredema

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