EDITORIAL

THE INTERNATIONAL CRIMINAL COURT:
Early challenges

This issue of African Security Review provides an in-depth analysis of the early challenges facing the International Criminal Court (ICC).

The ICC, which was formed just over two years ago, has started it first investigations in the DRC and Uganda. The cases have been referred to the court by the states and relate to crimes committed in these countries. The court is also considering a range of other cases.

The debate on whether the court should investigate crimes committed by UN peacekeepers continues to rage. Countries such as the United States are against the idea, but human rights organisations have become more vociferous in their call for UN peacekeepers to be held accountable. Anneke Van Woudenberg, a senior researcher with Human Rights Watch, who investigated the allegations on behalf of her organisation, says the UN is there for the protection of communities and it is particularly dangerous when protectors become violators. It is indeed disturbing that such allegations continue to surface despite the UN's zero tolerance policy on sexual exploitation and the abuse of community members by UN peacekeepers.

It is encouraging, however, that on 4 October 2004 the UN and the ICC signed an agreement that is intended to reinforce and institutionalise the relationship between the two institutions. It is hoped that this would enhance the UN's relationship with the court. Most importantly, the agreement is expected to help resolve some of the issues relating to the accountability of UN peacekeepers.

In the features section of this issue of the African Security Review, we consider the work the ICC is currently grappling with. In broad terms, the articles attempt to respond to the following salient questions: What challenges is the ICC facing and how should the court deal with them? What is the role of the ICC in handling crimes committed by UN peacekeepers?

In their article 'Who guards the guards?: The International Criminal Court and serious crimes committed by United Nations peacekeepers in Africa', Max du Plessis and Stephen Pete discuss the extent of the atrocities committed by UN peacekeepers, as well as the question whether international criminal law and the newly established ICC may have a role to play in the effective prosecution of UN peacekeepers.

In 'The International Criminal Court: Investigations into crimes committed in the DRC and Uganda. What is next?' Hakan Friman gives an update of recent developments regarding the court and points out some challenges, including the operations of the court vis-à-vis other peace efforts.

Angola has suffered from one of the longest-running conflicts in Africa, and in 'A case study of Angola: International human rights protection in situations of conflict and post-conflict' Andrea Lari and Rob Kevlihan consider the effectiveness of attempts by the Angolan government, the UN and non-governmental organisations to protect human

rights in Angola from early 1998 to date, during and in the immediate aftermath of the recent conflict.

I hope that this issue will make a contribution to the debate that seeks to strengthen the ICC in order to enable it to deal with future challenges, particularly in relation to the accountability of UN peacekeepers in their important role of safeguarding world peace.

Mpume Nyandu

FEATURE

WHO GUARDS THE GUARDS?[1]

The ICC and serious crimes committed by United Nations peacekeepers in Africa

MAX DU PLESSIS & STEPHEN PETE

In recent years there have been growing reports of UN peacekeepers committing severe crimes against the people they are meant to protect, while on peacekeeping duties. These crimes often take the form of gender-based violence and abuse. This paper examines the nature and extent of the problem, the accountability of the peacekeeping troops, the role and the extent of the involvement of International Criminal Law, and the newly introduced International Criminal Court as well as the role of the national criminal courts. Can the ICC prosecute bad elements among the UN peacekeepers or is this the responsibility of the national criminal court of the peacekeeper concerned? Should the ICC be prosecuting such cases in the first place? How far does the principle of 'complementarity' limit the ICC in its attempts to prosecute those who commit crimes against humanity? In other words, 'Who guards the guards?'

Introduction

Although peacekeeping is often associated with serious crimes against helpless civilians, it is usually assumed that the peacekeepers are those attempting to prevent further atrocities, as opposed to being involved in the commission of such crimes. Sadly, this is not always the case, and those who are meant to keep the peace themselves become perpetrators of crimes against those under their protection. This is illustrated in a recent report to the Security Council of the United Nations (UN) by the Secretary-General of that organisation on the topic of 'Women and peace and security'.[2] In this report, the Secretary-General states:

> Sexual exploitation and abuse are forms of gender-based violence that can be perpetrated by anyone in a position of power or trust. The involvement of United Nations personnel, whether civilian or uniformed, in sexual exploitation and sexual abuse of local populations is particularly abhorrent and unacceptable and a serious impediment to the achievement of the goals of resolution 1325 (2000) on the protection of women and girls. In May 2004, the United Nations Mission in the Democratic Republic of the Congo (MONUC) uncovered allegations of sexual exploitation and abuse, including of minors, by civilian and military personnel in Bunia. Such abuses must be prevented and the perpetrators must be held accountable.[3]

Clearly, it is imperative that peacekeepers should be held accountable for serious crimes committed by them during peacekeeping operations. In practice, however, difficulties arise in relation to the issue of who is to be responsible for prosecuting such crimes and under which legal system such prosecutions are to be conducted. Peace-

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keeping operations invariably involve sensitive issues of national sovereignty, with troop-contributing states jealously guarding the sovereignty, which they exercise over the troops they have deployed on a particular peacekeeping mission. According to Marten Zwanenburg:

> In any peacekeeping operation … the issue of the entity on which criminal jurisdiction over the troops is conferred is important. States see criminal jurisdiction over their nationals as an aspect of their hallowed sovereignty, especially when those nationals are outside of the state's borders and therefore more vulnerable to claims of criminal jurisdiction by other states or entities. Considerable national sensitivities are associated with participation in (UN) military operations.[4]

Usually, in UN peacekeeping operations, status-of-forces agreements (SOFAs) are concluded between the UN and the host state, and contribution agreements (CAs) are concluded between the UN and the troop-contributing states which, to some extent, exempt the members of the peacekeeping force from the criminal jurisdiction of the host state.[5] These agreements normally provide that the troop-contributing states will exercise criminal jurisdiction over the troops that they contribute. This means that peacekeepers who commit crimes while on duty in another country are liable to prosecution for those crimes in terms of the (military) criminal law of their own state. The problem, of course, is that different states may have different views on which, if any, crimes committed by their troops they wish to prosecute. Individual states may not be either willing or able to prosecute serious crimes committed by their troops while performing peacekeeping duties. As the Women's International League for Peace and Freedom points out:

> When such acts are addressed at all in the national system, they are far removed from those most affected. The impacts on communities are devastating when targeted by those who often represent their last hope for security and stability.[6]

To the extent that there is a lack of accountability on the part of peacekeepers this problem is compounded by the inherent nature of peacekeeping operations, as well as by the fact that the UN lacks the authority to discipline its peacekeepers:

> Bringing charges against troops is complicated by the fact that they are posted for six-month terms and are unlikely to ever face a military investigation. Once the military takes over the inquiry, the United Nations has no legal authority to follow up the investigation and cannot ensure that a repatriated soldier will face prosecution.[7]

One way in which to temper the exclusive authority of the contributing state to prosecute its own troops deployed on a peacekeeping mission is to provide, in the peacekeeping agreements, for secondary jurisdiction by the host state in certain situations:

> The exclusive jurisdiction over military and CivPol [Civilian Police] personnel awarded to contributing states in the model UN agreements contrasts with the 'primary jurisdiction' awarded in SOFAs concluded between Member States of the North Atlantic Treaty Organisation (NATO). The NATO agreements allow host states to exercise secondary jurisdiction over nationals of a contributing state when the contributing state declines to prosecute their own national for an alleged crime.[8]

This solution, however, is not ideal:

> Even with a jurisdiction-sharing model, however, those serving in host states might often find it difficult or impossible to proceed with investigations of abuse by PSO [Peace Support Operation] personnel as well as aid workers associated with other international organisations in light of the fact that they are often reluctant to be seen as 'going against' those who are there to help them.[9]

Given the difficulties we have just described, the question to be addressed in this article is whether international criminal law and the newly established International Criminal

Court (ICC) may have a role to play in the effective prosecution of UN peacekeepers. Before dealing with the emergence of international criminal law and the establishment of the ICC, however, it is necessary to sketch the extent of the problem of atrocities committed by UN peacekeepers.

The extent of the problem

In recent years there have been increasing reports of serious crimes committed by UN peacekeepers engaged in peacekeeping operations. According to the Women's International League for Peace and Freedom:

> In the past decade, increasing numbers of accounts have surfaced of violations committed by peacekeepers against civilians, in particular women and girls, during UN peacekeeping operations. To date, violations by peacekeepers have been documented in Angola, Bosnia and Herzegovina, Cambodia, the Democratic Republic of Congo, East Timor, Kosovo, Liberia, Mozambique, Sierra Leone and Somalia (UNIFEM'S Independent Experts' Assessment). Currently, the UN is carrying out investigations of sexual abuse by peacekeepers in the Democratic Republic of the Congo.[10]

At the very least, allegations of serious atrocities committed by peacekeepers date back to the time of the UN peacekeeping mission to Somalia in 1997. Canadian, Belgian and Italian peacekeeping troops were alleged to have been involved in atrocities. For example, certain Italian peacekeepers were alleged to have pinned a man to the ground and shocked his genitals with wires from a radio generator, while other Italian troops were alleged to have bound a woman to an armoured truck and raped her with a flare gun. Belgian peacekeepers were alleged to have roasted a boy over an open fire until his clothes caught alight. Canadian soldiers were alleged to have conducted a 'turkey shoot' by setting out food and water to act as 'bait' to lure hungry Somalis into shooting range. They were also alleged to have beaten a 16–year-old Somali boy to death after raping him with a baton.[11] In most of these cases there was 'hard evidence' in the form of photographs taken of the incidents by the offending peacekeepers themselves. Some of the soldiers involved were charged by the military authorities of their countries of origin, and some even received short sentences of imprisonment. Others were not charged or were set free after investigation.[12]

Allegations of atrocities committed by peacekeepers were not restricted to the peacekeeping operation in Somalia. In January 2000, for example, it was alleged that a 12-year-old Kosovan-Albanian girl had been raped and murdered by a UN peacekeeper. According to the Women's International League for Peace and Freedom:

> Subsequent investigations revealed her murder took place in a climate of wanton violence and aggression against the Kosovan people and that peacekeepers had 'failed basic standards of conduct of human decency'. The Kosovo investigation also yielded information that similar crimes had been committed during an earlier peacekeeping mission in Haiti.[13]

As far as atrocities by United Nations peacekeepers in Africa are concerned, a 1996 study by Graca Machel[14] on the impact of armed conflict on children revealed a rise in sex trafficking of women and children in places where peacekeeping forces were operating. A recent policy briefing paper by the London-based NGO International Alert states that:

> In 2002, a study conducted by Save the Children Fund UK and UNHCR uncovered and documented allegations of widespread sexual exploitation and abuse by aid workers, including UN agency personnel serving in PSOs [Peace Support Operations] in West Africa (Liberia, Sierra Leone and Guinea), which became known as the 'food for sex' scandal.[15]

In July 2004 disturbing reports appeared in the London Independent concerning serious crimes alleged to have been committed by UN peacekeeping troops involved in the United Nations Organisation Mission in the Democratic Republic of Congo (MONUC):

> A total of 68 allegations against soldiers with the UN Organization Mission in the

> DRC (MONUC) have been recorded so far this year, among them a child prostitution ring run out of MONUC airport in Bunia and the rape of minors by Nepalese MONUC soldiers in the Ndromo camp. A senior Tunisian MONUC officer has been accused of soliciting a minor for sexual relations, while there have been repeated accusations against Pakistani, Moroccan and Uruguayan UN troops … On June 8, the MONUC office in Kinshasa sent a memo to UN headquarters in New York outlining 50 cases of sexual abuse against minors by MONUC troops in the north-eastern DRC town of Bunia. A second memo, one week later, detailed four other allegations and said attention should be paid to South African MONUC troops in Kindu, Moroccan MONUC troops in Kisangani and MONUC troops from Uruguay, Pakistan and Nepal … The memos prompted the deployment of an independent team from the UN Office of Internal Oversight Services (OIOS) to Bunia in mid-June to begin investigations into the alleged widespread sexual abuse of children. The investigation is said to be continuing.[16]

A senior member of MONUC, speaking on condition of anonymity to Kate Holt of the London Independent, called the OIOS enquiry referred to in the above quotation 'a joke' and further stated:

> The UN has no authority to follow through any of the investigations currently made. At most, after a lengthy process, they can repatriate an individual, but they cannot see those cases followed through in the country of origin. There is total impunity for MONUC soldiers, and this is a deep cause for concern.[17]

Kristina Peduto, the head of MONUC child protection in Bunia, told the London Independent that:

> The OIOS needs to be given the power to prosecute and act as a substitute for national justice … Members of the UN have a strong responsibility to send troops committed to uphold the UN code of conduct, and strong mechanisms have to be enforced on all MONUC staff, military and civilian, to act as a deterrent against sexual abuses, especially with minors.[18]

The picture painted by these sources reveals a disturbing reality. It is, furthermore, a reality which appears to involve South African troops committing crimes while performing peacekeeping duties in Africa. For instance, in a recent case a South African colonel in Goma was allegedly found during a UN investigation to have sexually molested his young male interpreter. It emerged he had requested young male interpreters under the age of 18 since the start of his mission.[19] Another incident involving South African troops was uncovered in Goma. They allegedly raped a 12 year old, identified only as Anna. It was reportedly one of a string of such incidents.[20]

The rise of the International Criminal Court

Given the problems of legal accountability mentioned in the introduction to this paper, we now consider whether peacekeepers might be held accountable by the recently established International Criminal Court for the crimes reported.

The general rule in international law is that states are able to exercise their domestic criminal law jurisdiction over criminal offences that affect their domestic concerns. As such criminal jurisdiction is usually exercised over crimes that are committed within a state's territory (such as murder, theft and rape), and may sometimes be exercised over crimes that are plotted abroad (such as high treason) because they threaten the domestic order. However, some offences affect not only the domestic legal order but also the international legal order. The classic example of such a crime is piracy and its perpetrators were described as hostes humanis generis – enemies of all humankind. Today, certain crimes are of such an egregious nature that their perpetrators are also rightly considered hostes humanis generis. The crimes that fall under the jurisdiction of the ICC are drawn from this body of outra-

geous criminal conduct and include crimes against humanity (torture being the classic example), genocide and war crimes.

Because until recently there has not been a permanent international criminal court with jurisdiction to try these crimes, and leaving aside isolated examples such as the international criminal tribunals at Nuremberg and Tokyo, it was left to national courts to do the job. Where the national court exercised jurisdiction over an international crime with no jurisdictional link on the basis of, for example, territoriality or nationality, it was said to be exercising universal jurisdiction. Perhaps the most famous example is the trial of Adolf Eichmann. In A-G of Israel v Eichmann (1961) 36 ILR 5, the District Court of Jerusalem decided that Israel had jurisdiction over atrocities allegedly committed by Eichmann, a Nazi officer, during WWII, on the grounds that the said atrocities were not domestic crimes alone but crimes against the law of nations.

As we shall see, an important role has been retained for domestic courts which are said to act in a complementary relationship with the ICC in punishing the world's worst criminals. But where such courts are not willing or able to act against the enemies of humankind, the ICC ensures that impunity does not follow their actions.

The ICC is the world's first permanent international criminal tribunal. The statute for the court was drafted in Rome in 1998 and adopted with the vote of 120 countries in favour of the treaty. Only seven countries voted against it (including China, Israel, Iraq and the United States) and 21 abstained. The treaty was to come into force upon 60 ratifications. This number was reached by April 2002. To date, the Rome Statute has been signed by 139 states and 97 states have ratified it.[21] The statute entered into force on 1 July 2002, at which time the court's jurisdiction over genocide, war crimes and crimes against humanity took effect. The court is situated in The Hague, the Netherlands. The judges for the court were chosen in February 2003 and were sworn in on 11 March 2003 at the inaugural session of the court in The Hague. The president is the Canadian Philippe Kirsch. The prosecutor has been chosen – the highly respected Argentine lawyer Luis Moreno Ocampo – and the court is expected to hear its first case soon. In all likelihood it will be an African affair, being either a prosecution of Ugandan rebel leaders of the Lord's Resistance Army (LRA), who have kidnapped thousands of children as soldiers or sex slaves,[22] or targeting recent crimes committed in the territory of the Democratic Republic of Congo.[23]

The ICC and peacekeepers

It is clear that the court is intended to prosecute those who are guilty of the world's most serious crimes. This brings us to the central question to be addressed in this article - that is, the extent to which the newly formed International Criminal Court may be expected to play a practical role in the prosecution of UN peacekeepers for serious crimes committed while involved in peacekeeping operations. Various factors lead to the conclusion that, in all probability, this role will be limited.[24] First, the types of crime over which the ICC exercises jurisdiction are strictly limited. Second, the jurisdiction of the court is limited by the principle of 'complementarity'. Each of these factors will be discussed in turn.

The crimes over which the ICC exercises jurisdiction

The ICC Statute creates a system of jurisdiction over the core crimes of genocide, crimes against humanity and war crimes.[25]

Each of the definitions of these crimes has some form of built-in threshold which will help to limit the discretion of the prosecutor.

Genocide

For genocide, this threshold is achieved by setting the bar particularly high for the dolus requirement that is part of the definition of the crime. Genocide involves the intentional mass destruction of entire groups, or members of a group. The crime of genocide has been committed throughout history, the 20th century being no exception; we think in particular of the Jews decimated by the Nazis, the

Cambodians destroyed by the Khmer Rouge and, more recently, the genocide inflicted by the Hutus on the Tutsis in Rwanda and the genocidal aims of Serbs against Kosovan Albanians in the former Yugoslavia. The term 'genocide' is a combination of the Latin words genus (kind, type, race) and cide (to kill), and was coined by Raphael Lemkin writing in response to the events of World War II.[26]

The gravity of the crime of genocide is reflected in the Rome Statute through the prosecutor having to prove that the offender had specific intent (dolus specialis) for the crime of genocide to have been committed. In simple terms the offender must have the intent to produce the result charged; that is, intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. Therefore, many of those who participate in a genocide may well fall outside this definition, since, although they are actively involved, they may lack the requisite intent to destroy, in whole or in part, the targeted group. In addition, genocide by its very nature has a quantitative dimension such that it will be prosecuted only when planned or committed on a large scale.[27] It goes almost without saying that it is difficult to imagine peacekeepers being actively involved in perpetrating genocidal acts, let alone being ascribed this type of special intention.

Crimes against humanity

The notion of 'crimes against humanity' in international law is sweeping and captures many concerns traditionally associated with international human rights law (the protection of life, the right not to be tortured, the rights to liberty and bodily integrity, etc). When it comes to crimes against humanity under the Rome Statute, the threshold for prosecution is raised by the nature of the actus reus that is a requirement of the definition. Article 7 of the Rome Statute provides that:

> For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Article 7(2) sets out the acts in question which include murder, rape, torture and enslavement.[28] It is interesting to note that, apart from rape, several other acts of gender-based violence are stipulated, including sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and any other form of sexual violence of comparable gravity.[29] From the definition it is clear that the actus reus of a crime against humanity involves the commission of an attack that is inhumane in nature, causing great suffering, or serious injury to body, or to mental or physical health. The act must be committed as part of a widespread or systematic attack against members of a civilian population.

The first discernible limitation for the prosecutor is that the act must be part of a widespread or systematic attack. Article 7(2) of the statute provides elucidation when it says that 'attack' is defined as 'a course of conduct involving the multiple commission of acts referred to in [Article 7(1)] against any civilian population, pursuant to or in furtherance of a state or organisational policy to commit such attack'. The attack is therefore the event in which the enumerated acts must form part and there may be a combination of acts (for example murder, rape, deportation) within a single attack as event. The attack has both widespread and systematic aspects. A widespread attack is an attack directed against a multiplicity of victims, while a systematic attack is an attack carried out pursuant to a preconceived policy or plan.[30]Another limitation is that the specific acts must be carried out 'pursuant to or in furtherance of a State or organizational policy to commit such attack'. The aggressor's act of murder, etc, must be pursuant to a policy. It is the existence of this policy that endows the criminal act with the character of a crime against humanity and excludes isolated acts of murder and so on from the court's jurisdiction.[31] Again, it seems clear that allegations against peacekeepers typically would not involve attacks against civilian populations involving such a widespread and systematic quality.[32] Marten Zwanenburg comments:

> It is difficult to imagine that a peacekeep-

> ing force would have as a policy to commit an attack on the civilian population. On the contrary, peacekeeping forces are heavily dependent on the cooperation of the civilian population in the execution of their mandate.[33]

Referring to the judgment of the ICTY Trial Chamber in the case of Tadic[34] Zwanenburg further points out that in order for an individual to be held liable for crimes against humanity, 'the perpetrator must know that there is an attack on the civilian population [and] know that his act fits in with the attack'.[35] Such knowledge will be very difficult to prove in court, particularly in light of the chaotic circumstances within which many peacekeeping operations are conducted. Zwanenburg concludes:

> Peacekeeping operations, composed of different contingents coming from different military cultures, often have unclear command and control structures and lack of (compatible) communication lines. This advocates for a presumption against individual members of an operation being aware of the general situation. Thus, in case of peacekeeping operations, knowledge might not easily be implied from circumstances. In any case, allegations against peacekeepers typically do not involve large numbers of victims and perpetrators. Investigations routinely underline the isolated nature of peacekeepers' criminal conduct. Crimes committed by peacekeepers will therefore most likely not fall within the jurisdiction of the Court as crimes against humanity.[36]

That being said, the recent accounts of UN peacekeepers' involvement in 'sex trafficking' and 'child prostitution rings' suggests that not all criminal acts of these soldiers are isolated, one-off events. What must be confronted is that these acts could be described as widespread. It must be remembered that Article 7(2)(g) of the Rome Statute specifically prohibits 'rape; sexual slavery; enforced prostitution; forced pregnancy; enforced sterilization; or any other form of sexual violence of comparable gravity'. Where such acts bear a widespread or systematic quality they constitute crimes against humanity. A peacekeeper that is involved in committing an offence, such as raping women and children or trafficking of women and children for sex, and which act is a repetition of similar crimes or part of a string of such crimes, makes himself liable to a charge that his act is part of a widespread practice. In this respect it must be borne in mind that the requirement that the attack have a widespread or systematic nature does not mean that a crime against humanity cannot be perpetrated by an individual who commits only one or two of the designated acts (murder, extermination, torture, rape, political, racial or religious persecution and other inhumane acts), or who engages in only one such offence against only one or a few civilians. So long as the individual's act or acts are part of a consistent pattern of offences by a number of persons linked to that offender, he or she may be properly charged with crimes against humanity.[37] Cassese proposes the following test to determine whether the necessary threshold is met when an individual is not accused of planning or carrying out a policy of inhumanity, but simply of committing specific atrocities or vicious acts:

> … one ought to look at these atrocities or acts in their context and verify whether they may be regarded as part of an overall policy or a consistent pattern of inhumanity; or whether they instead constitute isolated or sporadic acts of cruelty and wickedness.[38]

In their context, it is not impossible to imagine that some of the sexual crimes allegedly committed by UN peacekeepers in the DRC and elsewhere in Africa are crimes that are committed as part of a 'consistent pattern of inhumanity', thus exposing the peacekeepers to prosecution for crimes against humanity.

War crimes

War crimes have an ancient lineage, and historically belligerent states took it upon themselves to determine those acts committed in time of war for which they would try the combatants or civilians belonging to the enemy.

Generally speaking, war crimes are crimes committed in violation of international

humanitarian law applicable during armed conflicts. The sources of international humanitarian law are vast, and are broadly divided into two categories of substantive rules: 'the law of the Hague' and 'the law of Geneva' – which constitute the rules concerning behaviour which is prohibited in an armed conflict.

The 'law of the Hague' is made up of the Hague conventions of 1868, 1899 and 1907, which, generally speaking, set out rules regarding the various categories of lawful combatants and regulate the means and methods of warfare in respect of those combatants.[39] The 'law of Geneva', so called because it comprises the four Geneva conventions of 1949 plus the two additional protocols thereto of 1977, regulates the treatment of persons who do not take part in the armed hostilities (such as the civilians, the wounded, the sick) and those who used to take part, but no longer do (such as prisoners of war).[40] An exception here is the Third Geneva Convention which, in addition to the focus on treatment of persons no longer involved in the conflict, regulates the various classes of lawful combatants, and thereby updates the Hague rules. The Hague rules have been further updated by the First Additional Protocol to the Geneva Convention of 1977, which deals with means and methods of combat with a particular emphasis on sparing civilians as far as is possible in an armed conflict.

War crimes, like genocide and crimes against humanity, are similarly narrowed in scope under the Rome Statute. This is because of what is called the 'non-threshold threshold' built into Article 8 of the statute. Article 8 reads that the court has jurisdiction over war crimes 'in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes'. It is important to appreciate that the jurisdictional threshold does not amount to a new restriction on the customary definition of war crimes. Rather it is merely a method used to prevent the ICC from being overburdened with minor or isolated cases[41] and was specifically derived from the US proposal at Rome to safeguard US soldiers from being indicted for isolated cases of war crimes while serving abroad.[42] As with crimes against humanity, so too with war crimes, it is clear that the court's focus will be on individual actions which form part of a larger process of human rights violations.

Nonetheless, of all the crimes falling within the jurisdiction of the International Criminal Court, dolus specialis is not required for such crimes.[43] Accordingly, if it can be shown that a peacekeeper committed a war crime (such as murder, torture, or rape) as part of a large-scale commission of such a crime, that peacekeeper may be guilty of a war crime without any need to prove the special intention that would be required for genocide and crimes against humanity.

The jurisdiction of the ICC and the principle of complementarity

We see therefore that the definitions of the crimes under the jurisdiction of the ICC suggest that most violations committed by peacekeepers will not be admissible before the ICC. But even for those crimes of peacekeepers that arguably do trigger the court's jurisdiction, there is a second factor which will undermine the likelihood of the ICC instituting a prosecution against such wayward soldiers, namely, a jurisdictional limitation built into the very statute of the court. The ICC is expected to act in what is described as a 'complementary' relationship with domestic states that are party to the Rome Statute. The principle of complementarity ensures that the ICC operates as a system of international criminal justice which buttresses the national justice systems of states parties. The principle proceeds from the belief that national courts should be the first to act: it is only if the state party is 'unwilling or unable' to investigate and prosecute international crimes committed by its nationals or on its territory that the ICC is then seized with jurisdiction.[44] To enforce this complementarity principle, Article 18 of the Rome Statute requires that the prosecutor of the ICC must notify all states parties and states with jurisdiction over the case before beginning an ICC investigation[45] and cannot begin an investigation on his own initiative without first receiving the approval of a chamber of three judges.[46] At this stage, it would be open to states that are

party to the statute to insist that they will investigate allegations against their own nationals themselves. Should this national be a peacekeeper (for example a South African peacekeeper alleged to be guilty of an ICC crime in the DRC), in such a situation the ICC must then suspend its investigation.[47] The court will take over only if the national system is unable to investigate, for example because of a breakdown in its judicial systems; or because it had refused to investigate without appropriate justification.[48] If it had investigated and subsequently refused to prosecute, the court could only proceed if it concluded that that decision was motivated purely by a desire to shield the individual concerned.[49]

Certain media and NGO reports suggest that there are selected examples where there has not been a vigorous prosecution by national authorities of peacekeepers who have committed crimes. For instance, John Hillen, a senior fellow at the Centre for Strategic and International Studies, has commented in relation to the crimes committed in Somalia that prosecution of peacekeepers was rare:

> We may think that an egregious offence has been committed and the soldier may just get slapped on the wrist by national authorities and sent home, if that …[50]

Of course extensive research would be required to ascertain the true extent of the problem of non-accountability in relation to crimes committed by peacekeepers in Somalia and other areas of the world. What is clear, we submit, is that in the unlikely event that a peacekeeper's act meets the requirements of an ICC crime, the peacekeeper's state, if it is a party to the Rome Statute, will need to act promptly to prosecute the soldier concerned so as to avoid the potential triggering of the ICC's jurisdiction.

The important point flowing from the above is this. The complementarity principle affirms, rather than weakens, existing prosecutorial arrangements regarding peacekeepers. That is, the ICC's bark will in all likelihood be muffled by existing status-of-forces agreements (SOFAs) and contributing agreements (CAs) in terms of which the troop-contributing states retain criminal jurisdiction over the troops that they contribute. Of course, that does not mean that the ICC has no bearing on the issue. As this section has demonstrated, should the facts indicate that a peacekeeper is implicated in the commission of an ICC crime, the principle of complementarity places the burden on states to prosecute such acts by their nationals or committed on their territory as they are empowered to do under the relevant SOFA or CA. It is only if they fail to do so in a meaningful manner or without good reason that the ICC's jurisdiction will be triggered on the basis that the state concerned is 'unwilling' to properly investigate or prosecute pursuant to its duty under the Rome Statute. While certain reports indicate that some, arguably non-ICC, crimes by peacekeepers might, for a variety of reasons, not be vigilantly investigated and prosecuted, it nonetheless seems difficult to imagine that a state committed to its international obligations under the Rome Statute would fail to investigate and prosecute when faced with allegations that one of its peacekeepers has committed an ICC crime. Accordingly, were the unthinkable to happen, and a peacekeeper were to commit an ICC crime, the complementarity principle would most probably ensure that the chances are slim of seeing the ICC involved in the prosecution of such a peacekeeper. To reiterate, the effect of complementarity will be that the case will not be admissible before the ICC.

Further responses to crimes by peacekeepers

Not all responses to crimes by peacekeepers involve prosecution in terms of national or international law. Before we conclude we therefore note that certain welcome institutional responses (relating specifically to sexual exploitation and abuse) have been outlined by the Secretary-General of the UN in his recent report to the Security Council on the topic of 'Women and peace and security'.[51] Initiatives taken by certain member states to address sexual exploitation and abuse by peacekeepers include a code of conduct for peacekeeping missions developed by Finland. This code of conduct includes information on sexual exploitation and forbids the use of prostitutes

by peacekeepers. The code of conduct is monitored, and any violation gives rise to immediate action against those guilty of the violation.[52] As far as the UN itself is concerned, a number of measures have been instituted to address sexual exploitation and abuse by personnel, which are described in the report as follows:

> The Inter-Agency Standing Committee created the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, co-chaired by the Office for the Coordination of Humanitarian Affairs and UNICEF, which led to the issuance of a Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse. The Task Force developed a number of tools to facilitate the implementation of the bulletin such as implementation guidelines, model information sheets on sexual exploitation and abuse for local communities and model complaints forms. In addition, focal points on sexual exploitation and sexual abuse are to be appointed in each United Nations entity and NGO at country level, creating a network to ensure the full implementation of the bulletin in both emergency and development contexts.[53]

In particular, the UN regards effective monitoring and early identification of possible abuse by peacekeeping personnel as vital in combating such abuse. To overcome reported shortcomings in its monitoring mechanisms, the UN has set up system-wide focal points responsible for dealing with charges of gender-based violence. For example, in peacekeeping missions personnel conduct officers are appointed as focal points on sexual exploitation, charged with monitoring incidents and identifying patterns at the outset. In turn, an information sheet has been developed for local populations, informing them of the codes of conduct that bind peacekeeping troops.[54]

Naturally such responses are not a substitute for the prosecution in the relevant forum of a peacekeeper who is guilty of a crime, let alone an ICC crime. But it is heartening to see the UN acknowledging that there is a problem . Accountability for serious crimes might be instilled through a prosecution, but that measure ought to be regarded as an extreme measure which signals the distressing failure of peacekeepers to fulfil their guardian role. There should, ideally, never be a need to prosecute a UN peacekeeper for an ICC or lesser crime. But if that ideal is to be achieved, it must undoubtedly start with the monitoring and standard setting described in the Secretary-General's report.

Conclusion

Juvenal's ancient question 'Sed quis custodiet ipsos custodies?' remains as relevant today as when it was written approximately two thousand years ago.[55] In this article we have attempted to address in a brief fashion the issue of whether the newly established International Criminal Court has a practical role to play in the prosecution of UN peacekeepers for serious crimes committed by them while engaged in peacekeeping operations. Our conclusion is that the ICC may have a role to play, but this role is strictly limited by the nature of the crimes over which this court exercises jurisdiction, and by the doctrine of complementarity which restricts the jurisdiction of the court to a great extent. There may be exceptions,[56] but it is to be expected that in most cases, serious crimes committed by UN peacekeepers in Africa will be isolated in nature and the perpetrators of these crimes will not possess the necessary intent to enable such crimes to be classified as genocide or crimes against humanity. It is somewhat more likely that certain serious crimes committed by peacekeepers may amount to war crimes, although it is clear that the ICC is more concerned with war crimes committed on a wide scale than with isolated incidents. Furthermore, even if certain crimes committed by UN peacekeepers may be said to fall within the categories of genocide, crimes against humanity, and war crimes, the principle of complementarity will ensure that most such crimes are investigated and prosecuted by the state of the offending peacekeeper.

Accordingly, we expect that prosecutions of peacekeepers will continue to be conducted

largely by the national state of the peacekeeper concerned, and prosecutions of such soldiers by the ICC will remain a very distant exception to that norm. That is not necessarily a bad thing. The ICC is a call to responsibility for persons guilty of 'the most serious crimes of concern to the international community as a whole'.[57]

The ICC is not intended as a court for every type of crime. Where it is not clear that a peacekeeper has committed an ICC crime, it is in any event incumbent upon the peacekeeper's state to take action against him or her in terms of that state's commitment to justice more generally, leaving the ICC free to deal with the more serious crimes that plague the world. And even if the evidence shows that the peacekeeper is guilty of an ICC crime, an effective domestic prosecution of the soldier concerned by a state acting in complement with the ICC ought to be regarded as a victory for international criminal justice, not a failure thereof. The ICC's system of complementarity entitles us to expect that national criminal justice systems will play an important role in assisting the ICC to provide 'exemplary punishments' which will serve to restore the international legal order. As Anne-Marie Slaughter, dean of the Woodrow Wilson School of Public and International Affairs at Princeton, has pointed out:

> One of the most powerful arguments for the International Criminal Court is not that it will be a global instrument of justice itself – arresting and trying tyrants and torturers worldwide – but that it will be a backstop and trigger for domestic forces for justice and democracy. By posing a choice – either a nation tries its own or they will be tried in The Hague – it strengthens the hand of domestic parties seeking such trials, allowing them to wrap themselves in a nationalist mantle.[58]

The ICC will be effective when its existence operates to encourage domestic institutions to comply with their responsibilities under international humanitarian law to investigate and prosecute all those guilty of international crimes, including peacekeepers. In the words of the ICC prosecutor:

> As a consequence of complementarity, the number of cases that reach the Court should not be a measure of its efficiency. On the contrary, the absence of trials before this Court, as a consequence of regular functioning of national institutions, would be a major success.[59]

Notes

1 '*Quis custodiet ipsos custodes*?' Juvenal: Satires, VI. 347.
2 Security Council Document S/2004/814, distributed 13 October 2004. This was a follow-up report on the full implementation of Resolution 1325 (2000) on women and peace and security and was presented to the Security Council in October 2004.
3 Security Council Document S/2004/814, distributed 13 October 2004, at paragraph 99.
4 Marten Zwanenburg, The statute for an International Criminal Court and the United States: peacekeepers under fire, EJIL,10 1999, pp 124-143 at 127.
5 Such agreements as to criminal jurisdiction are in accordance with the Convention on the Privileges and Immunities of the United Nations, which confers immunity from legal process on officials of the United Nations. See Marten Zwanenburg, The statute for an International Criminal Court, p127.
6 PeaceWomen – Women's International League for Peace and Freedom, 'About Peacekeeping Watch': <www.peacewomen.org/un/pk watch/aboutpkwatch.html>.
7 UN Wire, 'Abuse by UN troops in DRC may go unpunished, report says',12 July 2004.
8 Pam Spees, 'Gender justice and accountability in peace support operations – closing the gaps: a policy briefing paper by International Alert', February 2004, p 23: <www.international-alert.org>.
9 Spees, 'Gender justice and accountability', p 23.
10 PeaceWomen – Women's International League for Peace and Freedom, 'About Peacekeeping Watch'.
11 Report by Dateline NBC correspondent Lea Thompson dated 11 January entitled 'Disturbing the peace': <www.freedomdomain.com/ un/disturbpeace.html>.
12 Thompson, 'Disturbing the peace'.
13 PeaceWomen – Women's International League for Peace and Freedom, 'About Peacekeeping Watch'.
14 UN Secretary General, 'Promotion and protection of the rights of children: impact of armed conflict on children. Note by the Secretary General' UN Doc A/51/306/ 26 August 1996 (Graça Machel Report).

15 Spees, 'Gender justice and accountability', p 21.
16 UN Wire, 'Abuse by UN troops in DRC may go unpunished'.
17 UN Wire, 'Abuse by UN troops in DRC may go unpunished'.
18 UN Wire, 'Abuse by UN troops in DRC may go unpunished'.
19 Kate Holt and Sarah Hughes, 'SA troops "raped kids in DRC"', *Pretoria News*, 12 July 2004.
20 Ibid.
21 For latest ratification status see <www.iccnow.org>.
22 See UN Wire, 'First International Criminal Court case targets Uganda's rebels, 30 January 2004.
23 See press release of the Office of the Prosecutor of the International Criminal Court, 'Prosecutor receives referral of the situation in the Democratic Republic of the Congo',19 April 2004.
24 It is interesting to note that, until recently, it was possible to point to a third significant factor limiting the potential role of the International Criminal Court in the prosecution of peacekeepers. Security Resolution 1422 of 2002 (which was renewed in 2003 but not in 2004) provided immunities from prosecution in the ICC for personnel from states that were not party to the Rome Statute and that had nationals participating in operations authorised by the United Nations.
25 See Rome Statute, Article 5. The court will also have jurisdiction in future over the crime of aggression, but only once the crime has been defined and conditions for jurisdiction set out in accordance with the statute by the states' parties (see Article 5(2)).
26 See Ralph Lemkin, *Axis rule in Occupied Europe,1944*,, pp 79-95, cited in Cassese, 'Genocide', p 335, in Cassese et al, *The Rome Statute of the International Criminal Court: a commentary*, Vol I, 2002; Ralph Lemkin, Genocide as a crime under *International Law*', AJIL, 41 1947, p 145; see also Kittichaisaree, International Criminal Law, 2001, p 67.
27 See Schabas, *An introduction to the International Criminal Court,* 2000, p 24.
28 The full list of acts in Article 7(2) is as follows: (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape; sexual slavery; enforced prostitution; forced pregnancy; enforced sterilization; or any other form of sexual violence of comparable gravity; (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law, … (i) enforced disappearances of persons; (j) the crime of apartheid; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
29 Article 7(1)(g).
30 Kittichaisaree, *International Criminal Law*, p 96.
31 See Schabas, *An introduction to the International Criminal Court*, pp 24-25.
32 See Zwanenburg, The statute for an International Criminal Court, p 135 and footnote 61 where it is pointed out that the investigations against peacekeepers (for instance the investigation into the behaviour of Italian peacekeeping troops in Somalia) routinely underline the isolated nature of peacekeepers' criminal conduct.
33 Zwanenburg, The statute for an International Criminal Court, p 134.
34 *Prosecutor v Dusiko Tadić a/k/a* 'Dule', Opinion and Judgment, Case No IT-94-1-T, T. Ch II, 7 May 1997. (Tadic' Judgment).
35 Ibid at para 659.
36 Zwanenburg, The statute for an International Criminal Court, pp 134 and 135.
37 As a good example, Kittichaisaree points out that the act of denouncing a Jewish neighbour to the Nazi authorities committed against the background of widespread persecution against the Jews has been held to be a crime against humanity. See Kittichaisaree, International Criminal Law, p 97, *citing Kupre_ki_ and others*, ICTY, Trial Chamber, judgment on 14 January 2000, Case No IT-95-16-T, para 550.
38 Cassese, 'Crimes against humanity, p 361, in Cassese et al, *The Rome Statute of the International Criminal Court*.
39 The Hague rules also deal with the treatment of persons who do not take part in armed hostilities or who no longer take part in them, but in this respect the Hague rules have been supplanted by the Geneva rules, which cover this aspect of humanitarian law in more detail.
40 *Cassese, International Criminal Law, 2003*, p 48.
41 See Kittichaisaree, International Criminal Law, p 133.
42 Kittichaisaree, *International Criminal Law*, p 133. As Scheffer, the head US delegate at Rome, himself points out, '[t]he United States had long sought a high threshold for the court's jurisdiction over war crimes, since individual soldiers often commit isolated war crimes by themselves that should not automatically trigger the massive machinery of the ICC'.
43 Zwanenburg, The statute for an *International Criminal Court*, pp 134 and 136.
44 Article 17 of the Rome Statute.
45 See Article 18(1) of the Rome Statute.
46 See Article 15(3).
47 See Article 18(2).
48 See Article 18(3).
49 See Article 17(1)(b).
50 Thompson, 'Disturbing the peace'.
51 Security Council Document S/2004/814 distrib-

uted 13 October 2004. This was a follow-up report on the full implementation of Resolution 1325 (2000) on women and peace and security and was presented to the Security Council in October 2004.

52 Security Council Document S/2004/814, para 100.

53 Security Council Document S/2004/814, para 101.

54 Integrated Regional Information Networks (UN humanitarian information unit) web special on violence against women and girls during and after conflict, 'Our bodies – their battle ground: gender-based violence in conflict zones: UN peacekeeping – working towards a no-tolerance environment': <www.irinnews.org/webspecials/GBV/print/p-feaUNp.asp> (September 2004).

55 'Who is to guard the guards themselves?' Juvenal: Satires, VI. 347.

56 Such as crimes involving child prostitution rings and sex trafficking, discussed supra.

57 See the preamble to the Statute of the International Criminal Court.

58 'Not the court of first resort', Washington Post, 21 December 2003.

59 Quoted in McGoldrick et al, *The Permanent International Criminal Court: legal and policy issues,* 2004, p 477.

FEATURE

THE INTERNATIONAL CRIMINAL COURT

Investigations into crimes committed in the DRC and Uganda. What is next?

HÅKAN FRIMAN

The statute of the International Criminal Court is now in force and the court has begun its first investigations. Other conflicts and more investigations are being considered. The first investigations in the DRC and Uganda are based on these states referring crimes committed on their own territory to the court, an unexpected development. Such a move has been encouraged by the court's prosecutor, hoping that this will enhance the state's crucially needed cooperation in the investigations. The prosecutor has announced some core policies: a positive approach to cooperation, a focused prosecutorial strategy aimed at the perpetrators who are most responsible, and a limited number of cases. Other preparations for the investigations have been made. This paper provides an update on recent developments regarding the court and points out some challenges, including the operations of the court vis-à-vis other peace efforts.

Introduction

The Rome Statute of the International Criminal Court (ICC) came into force on 1 July 2002 and in 2003 the judges,[1] prosecutor and registrar took office. To date, 94 states are parties to the statute, 24 of them being African states. The Democratic Republic of Congo (DRC) ratified the statute on 11 April 2002 and Uganda on 14 June the same year.

Subsequently, this brand-new international institution, which is committed to learning from previous experiences (good and bad), has established itself by expounding its internal organisation, recruiting staff, drafting and adopting various instruments such as the regulations of the court, and developing support systems for administrative and operational routines. The approach has been that this permanent institution should benefit from careful planning instead of rushing ahead, risking early mistakes that may take a long time to correct. This paper provides an update of the activities of the court, with particular emphasis on developments concerning the DRC and Uganda.

Soon after the statute came into force, communications from individuals and organisations began to come in to the ICC regarding alleged crimes that ought to be investigated. As of June 2004, the Office of the Prosecutor (OTP) had received almost 800 communications, many of them about the same conflicts. All communications that could potentially lead to the prosecutor initiating an investigation *proprio motu* with the authorisation of a judicial chamber[2] must be assessed. The OTP

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has developed a rigorous process for dealing with such communications.

Prosecutor Luis Moreno Ocampo announced to the ICC Assembly of States Parties in September 2003 that Ituri, in the DRC, was 'the first situation which merits to be closely followed by the Office'.[3] At that time, no referral had been made by a state or the UN Security Council and no formal investigation had commenced. In fact, it was still not clear how the court's exercise of jurisdiction should be triggered regarding Ituri. During this initial phase, the OTP conducts an analysis of information, much of it from open sources, and makes contacts with states and others. The tools under the statute for a formal investigation or cooperation with states were not yet available but even so the prosecutor was obliged to determine whether the criteria for the commencement of an investigation had been met. One important criterion is whether the 'case is or would be admissible under article 17',[4] that is, the so-called complementarity principle, which establishes the relationship between national criminal jurisdictions and the ICC.

More recently, first Uganda and then the DRC took the step of referring to the ICC prosecutor situations within each country's own borders, thus triggering the jurisdiction of the court.[5] The situations have been assigned to different pre-trial chambers.[6] In addition, the OTP continues to monitor other situations of potential concern[7] and more recent events point towards possible future investigations in three other African countries:the Central African Republic, Ivory Coast and Sudan (Darfur).

A collaborative approach

The ICC does not have its own police force and will often face great difficulty in obtaining access to the crime site or to witnesses and other evidence. Although the statute places strict obligations upon the states parties to cooperate with the court, cooperation will often be a much more complex exercise in practice. Sanctions for a state's non-compliance with obligations vis-à-vis the ICC are possible, but, as always, international sanctions are a somewhat blunt and unpredictable instrument. While sticks may be useful, and the prosecutor's *proprio motu* powers constitute an important tool, carrots are probably faster and more reliable.

On a similar note, the prosecutor has opted for a collaborative approach vis-à-vis the international community in general, including states, international organisations and civil society, and in particular towards the states in which international crimes have allegedly been committed.[8] The approach has ramifications for the complementarity principle – encouragement and support for national prosecutions rather than competition. The prosecutor has labelled this 'a positive approach to complementarity'. This approach has been applied to both the DRC and Uganda.

A state that is hostile to the ICC taking action cannot be expected to assist the court in the way required for effective investigations and prosecutions within reasonable timeframes. The length of proceedings before the ICTY and ICTR has been of great concern for political, financial and legal reasons. Assistance with the investigations is needed, for example by providing access to sites, archives and people, including military personnel, and with respect to arresting and surrendering suspects. However, deployment of ICC investigators in the field is also important since victims and witnesses may be very reluctant to speak to state officials. Protection of victims, witnesses, and ICC investigators is crucial. The cooperation of state organs may prove indispensable, particularly in a state where the conflict is continuing,

Nevertheless, it is of crucial importance that the focus on a constructive dialogue with states, represented by their governments, does not compromise the court's independence and impartiality. As underlined by the ICTY's first prosecutor, Richard Goldstone, the prosecutor of an international criminal jurisdiction must play a role that differs significantly from that of a national prosecutor and involves extensive contacts with states and others.[9] Still, the prosecutor must exercise a great deal of caution and have *fingerspitzgefühl* in this difficult balancing act.

DRC

When the prosecutor announced in September 2003 that his office was watching Ituri, he expressed his readiness to use the *proprio motu* powers in order to commence formal investigations. But it was clear from the outset that he would rather seek a collaborative solution, preferably with the assistance and support of African countries.[10] Hence, the ICC prosecutor entered into a dialogue on a 'consensual division of labour' with the DRC. The ICC would target leaders who bear the greatest responsibility for crimes within the jurisdiction of the court (including temporal jurisdiction) and national authorities would deal with others in appropriate ways.[11] There were early signals that the DRC welcomed the approach and an extensive dialogue between the prosecutor and the government of the DRC took place. Contacts with other states were also made.

The efforts were fruitful. In a letter dated 3 March 2004 and signed by President Joseph Kabila, the DRC, as a state party to the Rome Statute, referred the situation of the DRC since 1 July 2002 to the ICC. Of course this referral has a background in domestic Congolese politics and there may well have been different views within the transitional DRC government as to whether it should have been made at all.[12] Interestingly, Vice-President Jean-Pierre Bemba of the (MLC) movement, who is regarded by some as a potential war criminal, did not oppose the move at a press conference shortly afterwards. However, he did support the Lusaka Accord and the principle contained in it that a rebel movement has the right to administer the justice system within the territory that it occupies. Bemba concluded that the ICC must respect criminal proceedings conducted by such authorities. Indeed, the MLC has put some human rights violations on trial, but the legitimacy and credibility of those trials have been seriously questioned.[13]

In June 2004 Moreno Ocampo announced his decision to open the court's first criminal investigation into crimes allegedly committed on the territory of the DRC since 1 July 2002.[14] Notification of the decision was sent to states in accordance with the statute, thus giving them an opportunity to request deferral to national proceedings.[15] No such request has been made and the investigation focuses on the Ituri region.

Uganda

The Ugandan government's move to refer a situation in its territory to the ICC was more surprising. The referral took place in December 2003, that is, before the DRC referral, and was made public on 29 January 2004. The referral immediately put the prosecutor to the test. According to its wording, the referral was one-sided and pointed to 'the situation concerning the Lord's Resistance Army', that is, the armed opposition in the north of the country. Of course such an investigation would easily compromise the ICC's standing as an independent and impartial criminal court and concerns were raised, *inter alia*, by NGOs. Besides the policy issue, it is debatable whether the court could legally accept a referral from a state that relates only to one party to the conflict.

Hence, the prosecutor has stressed – both in public and in talks with the Ugandan government – that his office will investigate all crimes related to the situation in an impartial way, that is, including any crimes committed by, for example, Ugandan government forces (UPDF),[16] although to date there have been few efforts to punish them domestically. President Museweni has also reportedly – according to the BBC - pledged to cooperate with the ICC in the investigation of government forces.[17] The wording of the referral is ambiguous as to its exact scope but with the interpretation of the mandate that the prosecutor has given, together with the acceptance of the Ugandan government, the question of one-sidedness has evaporated (at least for now) and the OTP is moving ahead on the understanding that crimes will be investigated objectively, regardless of the identity of the perpetrators.[18]

In July 2004 the prosecutor began a criminal investigation into the situation in north-

ern Uganda regarding crimes committed from 1 July 2002 onwards. The investigation is under way and, according to press reports, Moreno Ocampo has expressed the hope that criminal proceedings will open in mid-2005.[19]

Central African Republic, Ivory Coast and Sudan?

Yet another country, the Central African Republic (CAR), has referred a situation that concerns the country itself. CAR ratified the Rome Statute on 3 October 2001 and the referral, received by the prosecutor in January 2005, encompasses crimes committed in the country since 1 July 2002. The OTP is currently conducting the analysis required to determine whether the criteria to initiate an investigation are satisfied.[20] The decision whether to open a formal criminal investigation has not yet been taken regarding the CAR.

As to the Ivory Coast, not yet being a party to the Rome Statute, President Gbagbo has reportedly submitted a letter granting the ICC jurisdiction over crimes committed in the country.[21] This is not sufficient for the commencement of a criminal investigation by the court, however, and no such investigation has been initiated. Nonetheless, crimes in the Ivory Coast could later be the subject of ICC investigation and the UN has admitted that it has drawn up a list, which is still confidential, of people accused of human rights abuses during the country's two and a half-year-old civil war.[22]

The most recent and perhaps the most interesting development is the current discussion regarding the Security Council referring the situation in Darfur, Sudan, to the ICC. This would be the first referral of its kind and it could target a non-state party such as Sudan.[23] Discussions were recently triggered by a UN report that reported crimes in the Darfur conflict and strongly recommended that the situation should be referred to the ICC.[24] Many members of the council have expressed their support of a referral, but the United States is against it. Instead, the United States, which is careful not to legitimise the ICC, is said to favour a special court for Darfur. However, this approach appears unrealistic. One idea behind the ICC was to avoid the creation of *ad hoc* international criminal tribunals. In addition, a new institution would be expensive and take a long time to implement. The matter is still to be decided.

Complementarity and cooperation

As noted above, the prosecutor must establish that the case is or would be admissible – with respect to the complementarity principle – before an investigation may be commenced. A referral by a state party of a situation that occurs within that state was not really contemplated when the statute was negotiated. However, it may be argued that the admissibility of a case before the court is not an issue when the state is passive and is not investigating the alleged crimes.[25] In the referral, the DRC indicated that its relevant authorities are not able to investigate and prosecute crimes that the ICC is competent to try. While there may be pertinent reasons for a state not exercising jurisdiction, and thereby for example providing for burden-sharing with the ICC, there is a risk of states dump on the court cases that they cannot or do not want to handle themselves. Hence, the prosecutor will have to develop different techniques to minimise this risk and use the legal tools at his or her disposal to prevent overburdening the court.

Nevertheless, a referral is expected to bring additional positive effects. In the prosecutor's words, a state referral of a situation comes with 'a strong expectation that the state will give its support and cooperation' and a state referring a situation within its own territory is 'a great sign of confidence and trust in the court'.[26] The DRC and Uganda have both made explicit commitments to cooperating with the court.

Legal cooperation and possible national prosecutions require implementing legislation in both countries. While the DRC takes a monist approach to international treaties and thus accepts that binding international treaty provisions will be applied directly by national authorities, effective legal cooperation

requires amendments to the laws of the land. A draft bill addressing both substantive criminal law and cooperation with the ICC was submitted to parliament in 2002, but not much progress has been made so far. Uganda, on the other hand, applies a dualistic approach to treaty obligations and implementation into municipal law is required. To this end, on 28 May 2004 a draft bill on the necessary legislation was published by the Ugandan government and submitted to parliament.

However, full cooperation by the referring state is not enough. There is foreign involvement in both conflicts, non-ICC states parties are implicated in the hostilities and foreign nationals fall under the court's jurisdiction concerning crimes committed in a state party to the ICC. At the same time, however, successful prosecutions may depend on the cooperation of some of these foreign states. For example, the leader of the Lord's Resistance Army (LRA), Joseph Kony, is allegedly based in southern Sudan and thus the cooperation of Sudan, a non-state party alleged to have supported the LRA in various ways, may prove necessary. While efforts to seek Sudanese cooperation may benefit from the peace process regarding the southern part of the country, the conflict in the western part, in Darfur, could be a complicating factor. Similarly, Rwanda may be a necessary cooperation partner concerning the DRC, and also Uganda, although these states have actively taken part in the DRC conflicts. As in the *ad hoc* tribunals (ICTY and ICTR), the ICC will probably have to employ all its skills and tools in order to obtain the cooperation that it needs.

The DRC and Uganda have both signed executive agreements with the United States, so-called bilateral immunity agreements. While these agreements are highly controversial, and their effects for the court's exercise of jurisdiction are disputed, they should not pose any particular problem in practice with respect to investigations and prosecutions by the ICC for crimes in the DRC and Uganda.

The court may cooperate not only with states but also with other entities such as intergovernmental and non-governmental organisations. The statute foresees a special relationship between the ICC and the United Nations and a draft relationship agreement, submitted by the ICC Assembly of States Parties, has been negotiated between the UN Secretariat and the ICC and was signed by the UN Secretary-General, Kofi Annan, and the president of the ICC, Philippe Kirsch, on 4 October 2004. This development has paved the way for cooperation with UN peacekeeping operations, and in accordance with its present mandate the UN mission in the DRC (MONUC) will 'continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice'.[27] However, while the mandate provides for cooperation, it falls short of allowing MONUC to use all necessary means to do so.

Moreover, on 22 December 2004 a cooperation agreement was signed by the OTP and Interpol, establishing a framework for cooperation between the two parties. The OTP, *inter alia*, will obtain access to Interpol telecommunications network and databases, and cooperation is foreseen regarding the exchange of police information and criminal analysis as well as in the search for fugitives and suspects.

Prosecutorial strategy, investigations and other proceedings

The prosecutor needs a strategy that takes into account the global nature of the court and thus several situations in different parts of the world may have to be handled concurrently. The resources of the court will be limited and relatively swift proceedings are striven for. However, the potential number of suspects and crimes in each situation will probably be high and thus priorities must be made. Like the ICTY and ICTR, as well as the Special Court for Sierra Leone, Prosecutor Moreno Ocampo has chosen a policy which targets 'those who bear the greatest responsibility, such as the leaders of the State or organisation allegedly responsible for those crimes'.[28] In an ongoing conflict, a focus on top rebel leaders could lead to their isolation and encourage some of their followers to dis-

tance themselves and seek separate arrangements with the government. Scrutiny of political and military leaders on the government side may prompt reforms and measures to address impunity within the military and security forces.

An unresolved question is how to establish who are 'those most responsible' for the crimes. Those who have had a functional role as leaders and planners are not necessarily the sole targets, but also some of those who have committed the most notorious crimes could be included. Carla del Ponte, the ICTY prosecutor, has stated that some individuals who have committed numerous crimes in the most overt, systematic or widespread manner might play a large role in encouraging others by setting examples and hence qualify as 'the most responsible'.[29]

In the DRC, for example, neither the referral nor the prosecutor's decision restricts the court's exercise of jurisdiction to a certain region. However, the court's resources will allow only a limited number of investigations and crimes committed in Ituri will apparently be targeted initially. Moreno Ocampo has spoken of possibly two cases being brought forward to start with, each focusing on different warring groups, and dealing with a handful of suspects.[30] A similar approach could be expected for Uganda.

Investigations are led by Serge Brammertz, one of the deputy prosecutors,.A small interdisciplinary team of lawyers, investigators, and military and other experts is assigned to each investigation. Detailed investigation plans are prepared. Interaction with national experts and specialist resources in different countries is also foreseen. Trial attorneys will participate as early as the investigation, contributing to investigation plans and evidence collection which are geared towards the needs for trial. Another deputy prosecutor, Fatou Bensouda of Gambia, is responsible for the trials.

With focused and well-prepared investigations, the length of the proceedings could be shortened. In practice it may be difficult to establish the criminal responsibility of leaders and planners without investigating others lower down the chain of command. However, experience has shown that broad investigations in which extensive evidence is gathered provide for extensive charges, problems with respect to a good overview of the material (possibly in multiple cases) and disclosure obligations, as well as long trials. The effects will be felt throughout the court. Thus, investigations in accordance with the prosecutor's general policy and a selective charging practice are expected. Additionally, the OTP is developing ideas on how to minimise the interviewing of witnesses, and thus avoid putting them at risk. Another feature of the ICC, which is different from its predecessors, is that judges will also have a role to play in the investigation. The pre-trial chamber has functions that may make it possible to collect and preserve evidence that could later be used at trial.

As part of the focused approach, new computer-based tools are being developed. One such tool is intended to match legal requirements for different crimes and the evidence obtained in the investigation. As in some national jurisdictions, the ICC prosecutor is obliged not only to focus on incriminating evidence, but also to seek exonerating evidence (a 'principle of objectivity'). This requires additional work, but might save the court time and efforts in the longer run.

The ICTY and ICTR do not sit in the former Yugoslavia or Rwanda, something that is sometimes criticised. The ICC is based in The Hague, but the statute foresees that the court will conduct judicial proceedings, including the trial, in other locations with the consent of the state in question.[31] Logistically this may be a nightmare, but could bring other positive effects. There are currently discussions within the court as to whether certain proceedings at least should be carried out on site, particularly by the pre-trial chamber, and the budget adopted for 2005 provides for the creation of field offices in the two situations under investigation.

The ICC and victims

In the ICC proceedings, the victims of crimes are given a different role from that of simply providing evidence. They can participate in

the criminal proceedings in their own right and the statute also contains provisions on reparations.[32] These features have been widely hailed, but there are concerns that high expectations will be impossible to meet in practice. All organs of the court are currently working on how to best accommodate the requirements of the statute with respect to security and participation of victims as well as reparations. Civil society organisations are also involved in this process.

Furthermore, the statute establishes an independent Trust Fund for Victims, which is part of the scheme for reparations to victims. The board of directors of the fund, who include former archbishop Desmond Tutu,[33] met in April 2004 for the first time to discuss *inter alia* the fund's jurisdiction, management, and criteria for receipt of funds. The criteria will later be established by the Assembly of States Parties.

Criminal investigations and other peace efforts

In both countries, perhaps even more so with respect to Uganda, there is some concern that criminal investigations and prosecutions may derail ongoing peace efforts. This is an important issue for supporters and sceptics of the court.

In Uganda, the amnesty legislation that was adopted to encourage rebel forces to lay down their arms will pose a challenge to the Ugandan government and to the ICC. The government may encounter conflicting domestic (amnesty) and international (cooperation) obligations. The ICC is not bound by amnesties that were decided in a particular state and is not prevented legally from moving ahead with an investigation or prosecution of someone who has been granted amnesty. Still, the court, as an international vehicle for a more peaceful and secure world, should be sensitive to processes aimed at bringing about peace, transition to democracy, and reconciliation.

Without entering the ongoing debate as to whether amnesty is an option for states regarding the international crimes under the jurisdiction of the ICC, it is worth noting that the Rome Statute contains some mechanisms that allow the court to take a balanced approach to other processes. While the complementarity principle apparently leaves little room for a case being inadmissible owing to non-criminal proceedings, the court's mandate is explicitly directed towards the most serious crimes of concern to the international community as a whole and a case will be inadmissible if it is 'not of sufficient gravity'.[34] The prosecutor's focus on 'those most responsible' should also be mentioned again. Moreover, and a more promising aspect, the prosecutor is required to determine whether the initiation of an investigation would be 'in the interests of justice', a requirement that provides the prosecutor, and on review the judges, with a level of discretion.

In addition, this court is a permanent institution and is not bound by statutes of limitations regarding the core crimes.[35] And good timing may well be a key to minimise any disruption that prosecution might cause to a peace or transitional process. Unlike other international criminal tribunals and courts with a limited lifespan, the ICC thus has the option – although admittedly it is not unproblematic for political and legal-practical reasons – of using restraint in a particularly sensitive phase of a political process. Contributing to new victims instead of deterring crimes is hardly in the interests of victims or justice. Any such action, or non-action, must be exercised with great care so that the independence and impartiality of the court are preserved.

Moreover, the temporal jurisdiction of the ICC is limited to crimes committed from 1 July 2002 – the date that the Rome Statute came into force[36] – but of course the conflicts, including the commission of international crimes, go back much further. Hence, the crimes that the ICC may handle are only the most recent ones and other mechanisms will have to be introduced to address earlier crimes and the broader issue of justice after the war, be they national prosecutions (with or without international support), truth and reconciliation processes, a combination of these, or

something else.[37] The criminal proceedings before the ICC may contribute to, but, owing to the nature of such proceedings and temporal limitations, not provide a full historical record of the conflict.

Some reflections

The first investigations of the ICC address conflicts in Africa. Besides being the very first operations of the court, the conflicts themselves are very challenging. In both the DRC and Uganda armed violence has not ceased and the government does not have control over all affected areas. The cooperation of the respective governments is necessary for effective investigations and prosecutions, while at the same time state officials and government forces may be investigated. Indeed, a fine line to tread. The principle of complementarity may offer a way out, requiring national authorities to be willing and able to investigate and prosecute the crimes. Also mechanisms other than criminal justice measures will probably be required in order to address broader issues and the large number of lower-level war criminals. The prosecutor's published strategies and various procedural provisions, as well as the permanence of the institution, leave room for a careful and well-timed action with due regard to other initiatives to bring peace and stability to the affected regions.

The cooperation of other states is needed, not least other African states, and thus the announcement by the Commission of the African Union that the ratification of the Rome Statute by all member states is a priority for the union is an encouraging sign.[38] In addition, cooperation with international organisations, NGOs and civil society groups will play an important role. If successful, the court can contribute to deterring ongoing atrocities, ending cycles of violence, combating impunity, and restoring the rule of law. However, the court and its activities form only one, albeit an important, building block for bringing about long-term peace and more stable societies, and its success depends on the support and commitment of many. The prosecutor's collaborative approach is aimed at promoting this, but it must be exercised without jeopardising the court's independence and impartiality. A complex task for complex situations.

Notes

1 During the build-up phase, not all 18 judges are permanently in The Hague and have therefore not, formally speaking, taken office.
2 Article 15 of the Rome Statute.
3 'Statement of the prosecutor at the second session of the Assembly of States Parties', 9 September 2003: <www.icc-cpi.int/library/organs /otp/030909_prosecutor_speech.pdf> (4 February 2005).
4 Article 53.1 c of the Rome Statute and Rule 104 of the Rules of Procedure and Evidence.
5 Articles 13 a and 14 of the Rome Statute.
6 Three pre-trial chambers were formally organised on 23 June 2004 (ICC-Pres-01/04) and on 5 July 2004 the presidency assigned the DRC situation to Pre-Trial Chamber I (ICC-01/04) and the Uganda situation (although no decision to investigate has yet been taken) to Pre-Trial Chamber II (ICC-02/04); the decisions are available at <www.icc-cpi.int/cases.html>(4 February 2005).
7 See the 'Address by Prosecutor Luis Moreno Ocampo to the third session of the Assembly of States Parties', The Hague, 6 September 2004, referring to six undisclosed situations that the OTP has chosen to follow: <www.icc-cpi.int/library/asp/060904_Moreno_Ocampo_third_ASP_English.pdf> (4 February 2005)
8 See the 'Paper on some policy issues before the Office of the Prosecutor', September 2003 (hereinafter 'Prosecutor's policy paper'): <www.icc-cpi.int/library/organs/otp/030905_Policy_Paper.pdf> (4 February 2005); see also the 'Prosecutor's statement to the Diplomatic Corps in The Hague, Netherlands', 12 February 2004: <www.icc-cpi.int/library/organs/otp/ OTP.SM20040212-EN.pdf>(4 February 2005).
9 R Goldstone, A view from the prosecutor, *Journal of International Criminal Law*, 2(2) 2004, pp 380-384.
10 OTP Press release on 26 September 2003: <www.icc-cpi.int/press/pressreleases/12.html> (4 February 2005).
11 See 'Prosecutor's statement to the Diplomatic Corps in The Hague'.
12 See 'ICC joins the Congolese chess game', International Justice Tribune – Independent Newsletter, No 8, 2004: <www.justicetribune.com/include/print_uk.php?id=2697&reference=> (4 February 2005).
13 See, for example, US Department of State, 'Country reports on human rights practices 2003',

Democratic Republic of the Congo, 25 February 2004: <www.state.gov/g/drl/rls/hrrpt/2003/27721.htm> (4 February 2005).
14 Article 53.1 of the Rome Statute; see the OTP press release on 23 June 2004: <http://www.icc-cpi.int/press/pressreleases/26.html> (4 February 2005).
15 Article 18 of the Rome Statute.
16 See 'Prosecutor's statement to the Diplomatic Corps in The Hague'.
17 Referred to in: 'Remarks by the ICC Prosecutor Luis Moreno Ocampo at the 27th Meeting of the Committee of Legal Advisers on Public International Law (CADHI)', Strasbourg, 18-19 March 2004: <http://www.iccnow.org/documents/statements/others/ICCProsecutorCADHI18Mar04.pdf> (4 February 2005).
18 See the prosecutor's letter to the ICC presidency (17 June 2004), attached to the decision to assign the situation to a pre-trial chamber, op cit.
19 See 'ICC hopes for Uganda trial in 6 months, then Congo', Reuters, 26 January 2005.
20 A pre-trial chamber has also been assigned to this situation on 18 January 2005 (ICC-01/05).
21 Article 12(3) of the Rome Statute. The Ivory Coast signed the statute on 30 November 1998 but has not acceded to it.
22 See 'Côte d'Ivoire: UN confirms blacklist of human rights abusers', IRIN, 1 February 2005: <www.irinnews.org/print.asp?ReportID=45304> (3 February 2005).
23 Sudan has signed the Rome Statute on 8 September 2000 but has not ratified it.
24 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General', Geneva, 25 January 2005. <www.iss.org.za/AF/profiles/Sudan/darfur/icidrep.pdf> (7 Feb. 2005). The commission was established pursuant to Security Council Resolution 1563 (2004) of 18 September 2004.
25 See 'Prosecutor's policy paper',p 5; see also 'Informal expert paper: the principle of complementarity in practice', 2003, pp 18-21: <www.icc-cpi.int/library/organs/otp/complementarity.pdf> (4 February 2005).
26 'Remarks by the ICC Prosecutor Luis Moreno Ocampo at CADHI meeting'.
27 Security Council Resolution 1565 (2004) of 1 October 2004, which also extends the deployment of MONUC until 31 March 2005.
28 'Prosecutor's policy paper',pp 6-7.
29 C Del Ponte, Prosecuting the individuals bearing the highest level of responsibility, *Journal of International Criminal Justice,* 2(2) 2004, p 517. See also: 'Informal expert paper: measures available to the International Criminal Court to reduce the length of the proceedings', 2003: <www.icc-cpi.int/library/organs/otp/length_of_proceedings.pdf> (4 February 2005).
30 Presentation to the All-Party Parliamentary Group on the Great Lakes Region and Genocide Prevention, House of Commons, London, 24 June 2004.
31 Articles 3 and 62 of the Rome Statute.
32 Articles 68 and 75 of the Rome Statute.
33 The other board members are Queen Rania Al-Abdullah of Jordan, Oscar Arias Sánchez (Costa Rica), Tadeusz Mazowiecki (Poland) and Simone Veil (France).
34 Article 17 of the Rome Statute; see also D Robinson, Serving the interests of justice: amnesties, truth commissions and the International Criminal Court, *European Journal of International Law,* 14 2003, pp 481-505.
35 Article 29 of the Rome Statute. The prosecutor has stressed the benefits of being a permanent institution; for example, 'Prosecutor's statement to the Diplomatic Corps in The Hague'.
36 Article 24 of the Rome Statute.
37 See H Friman, The Democratic Republic of Congo: justice in the aftermath of peace?, *African Security Review,* 10(3) 2001, pp 63-77.
38 See 'Strategic plan of the Commission of the African Union, Volume 3: 2004-2007 Plan of action – programmes to speed up integration of the continent', May 2004, p 65: <http://www.africa-union.org/AU%20summit%202004/Au%20summit%202004.htm> (4 February 2005).

FEATURE

INTERNATIONAL HUMAN RIGHTS PROTECTION IN SITUATIONS OF CONFLICT AND POST-CONFLICT

A case study of Angola[1]

ANDREA LARI AND ROB KEVLIHAN

This paper considers the effectiveness of Angolan government and United Nations (UN) and non-governmental attempts to protect human rights in Angola from early 1998 to date, during and in the immediate aftermath of the recent conflict. Angola has suffered from one of the longest-running conflicts in Africa. The country was originally a battleground for a proxy war between the Cold War superpowers, but the conflict developed its own self-sustaining dynamic in the 1990s, fuelled by revenue from oil and diamonds. The impact of the war on the Angolan people was severe – at its height in early 2002 over four million were internally displaced and around 450 000 lived in refugee camps in neighbouring countries. Increasing violence caused by rebel attacks and government counter-insurgency activities fuelled forced displacement and created one of the largest humanitarian crises of the 1990s. The international community responded with UN Security Council-mandated sanctions against UNITA, extensive humanitarian activities, and attempts at promotion and protection of human rights. However, the effectiveness of human rights activities was impeded by weak political support from donor nations, the nature of the governing regime, and humanitarian imperatives. Despite some minor successes, with respect to human rights Angola is a case study of failure: the failure of the international community and the Angolan government to adequately protect its citizens from gross and systematic human rights abuses during a brutal civil war.

'*In October 2001, one morning, when my wife was pregnant, they arrived and she could not flee quickly enough. I was able to flee with the four children, but she was caught by the soldiers and they shot her to death*'

Testimony from internally displaced person in Angola included in an MSF report on Angola[2]

Introduction

Angola's long war finally came to an end on 4 April 2002 with the signature of a memorandum of understanding between the *Forcas Armadas Angolanas* (FAA – the Angolan military) and the *União Nacional para a Independência Total de Angola* (UNITA). This historic agreement was greatly facilitated by

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the death of UNITA's leader, Jonas Savimbi, in February 2002.

That a conflict which had lasted for so long (since Angolan independence in 1975) could suddenly end with the death of one of its major protagonists is startling. However, other factors, including military advances, the government's counter-insurgency strategy, a changing geopolitical context (in particular the end of Cold War support to both sides and pressure of international sanctions against Unita) undoubtedly set the scene for this dramatic denouement.[3]

The history of the Angolan civil war in the 1990s is one of failed opportunities for peace. Initially it seemed that the end of the Cold War offered the hope of a new beginning for Angola, with international agreements leading to the independence of Namibia from South Africa and the withdrawal of Cuban troops from Angola. However, elections organised under the Bicesse Accord (1991) for 1992 resulted in a defeat in the first round of the presidential election for UNITA leader Jonas Savimbi, in an electoral process deemed by international observers to have been essentially free and fair.[4] As a result of UNITA's refusal to accept this result, the UN Security Council imposed the first set of sanctions in September 1993 (under Resolution 864 of the UN Security Council).

UNITA's return to war allowed it to take large swathes of the countryside, including the diamond-rich Cuango Basin, in early 1993 virtually unopposed. Two years of heavy fighting ensued, which lasted until a new ceasefire came into place with the signing of the Lusaka Protocol by both parties in November 1994. The Lusaka Protocol ended the fighting and obliged UNITA to accept the results of the 1992 election, demobilise, disarm and hand over occupied territory to state administration. In return UNITA agreed to participate in a government of national unity and reconciliation (known by its Portuguese acronym, GURN).

The process of implementation of the Lusaka Accord proceeded post-1994, but with a number of major flaws, in particular a lack of trust between the two parties. The consequence was a spiralling deterioration in the political situation with UNITA largely being blamed by the international community. UNITA stage-managed demobilisation and disarmament that left it with considerable hidden military capacity in place. By mid-1997, further UN sanctions were imposed on UNITA (Resolution 1127, August 1997, and Resolution 1135, November 1997) because of continued delays in the full implementation of the Lusaka Accord, including demobilisation and handing over of UNITA-controlled areas to state administration. In June 1998 the UN imposed a further set of largely financial sanctions (Resolution 1173) on UNITA when it became clear that the Lusaka process had broken down and UNITA continued to delay the handing over of territories. In the following months UNITA went further and began to occupy a number of districts that had previously been handed over to the government. The Government of Angola (GoA) responded with an offensive in December 1998 that was strongly countered by UNITA. UNITA's capacity to field a well-equipped conventional force at this time highlighted the obvious failure of the UN-imposed sanctions. The Angolan government reacted by asking the UN to withdraw the MONUA observer mission in place. Renewed government offensives in 1999 and 2000 finally deprived UNITA of control of most of Angola's large towns, many key bases and their capacity to wage conventional warfare. These offensives coincided with a tougher stance by the international community on the impositioning of sanctions, led by the Canadian government, who chaired the UN UNITA sanctions committee at this time.[5]

From 2000 onwards the Angolan government (which retained the title of GURN and continued to include elements of UNITA that had not gone back to war) began to implement a counter-insurgency strategy aimed at depriving UNITA of any possible sources of support in rural areas. This was primarily achieved through so-called *limpeza* (cleaning) activities by the FAA. *Limpeza* campaigns were used by the FAA to clear areas of the countryside considered to harbour UNITA elements. Typically populations were forcibly moved from their lands to the nearest urban centre and crops were destroyed to ensure that UNITA had no

access to food. This movement was accompanied by the use or threat of force and sometimes resulted in the deaths of innocent civilians. It also put these civilians at a higher risk of death because of starvation and infectious diseases in the short to medium term, since the FAA failed to provide them with basic food and health assistance in areas under military control. Simultaneously, UNITA stepped up its efforts to control civilian populations through inflicting protracted violence and targeting alleged government supporters or informers. UNITA also prevented civilians from leaving areas under their control. Entire villages were forced to follow UNITA troops and provide support services.[6]

These were the principal motives for people leaving their homes from 2000 to early 2002. They contributed to the dreadful humanitarian situation in the country, and were entirely the result of the manner in which the Angolan government and UNITA decided to conduct the war.[7]

Domestic political/legal system and protection

The first point of reference in a review of systems of protection for vulnerable people invariably must be the domestic systems of the state in which these people find themselves at risk. In the aftermath of the failed election, the ruling *Movimento Popular para aLibertação de Angola* (MPLA) maintained control, despite the retention of elements of UNITA in GURN. However, while MPLA members occupied key positions within the government, power increasingly became concentrated under the presidency, with President José Eduardo Dos Santos maintaining tight control. Named after the location of his residence, *Futungo,* Dos Santos' regime centralised control of key elements of the state, including control of the armed forces and paramilitary police, and of oil revenues from the state oil company and foreign investors. Key political appointments, particularly provincial governors, continued to be under the control of the president. As a result, Angola continued to be ruled by what was essentially a highly centralised authoritarian regime, despite the veneer of democratic legitimacy provided by the victory of Dos Santos in the first round of the presidential election. This is not to imply that the regime exhibited a highly organised structure at all times. The GoA were successful in maintaining a strong military and coercive capacity, but in other sectors rule by confusion or neglect was frequently the apparent *modus operandi*. This lack of capacity or apparent interest of key government ministries such as the Ministries of Health, Education and MINARS (Ministry of Assistance and Social Reintegration) frequently made for frustrating and ineffective encounters between international actors, local civil society and the state.

This centralisation of power was a relatively straightforward task. The dismissal of the prime minister and lack of a new appointee by Angolan President Dos Santos between 1998 and 2002 are indicative of the weakness of the Angolan legislature. The third pillar of governance – consisting of the constitution (approved in September 1992) and the judicial system - has been even weaker. The Angolan constitution, while rhetorically quite a progressive document, in practice has had little impact on how the country is governed. The Angolan judicial system has been in a state of collapse throughout the 1990s, with limited personnel and only 13 of 164 municipal courts functioning.[8] Minimal sums have been set aside for judicial institutions by the GoA throughout the decade, a clear indication of just how little priority it accorded to this area.[9]

In the same period an increasing number of internally displaced steadily crowded the capital, Luanda, provincial towns, and formal settlements. At the peak of the humanitarian crises in early 2002, there were some 300 camps, hosting a confirmed number of 1,2 million people.[10] The government rarely provided humanitarian assistance to these camps, relying instead on the services of humanitarian actors that progressively became overstretched and unable to assist this high number of people. Internally displaced persons (IDPs) also suffered frequent abuses at

the hands of government forces, including harassment, extortion, property dispossession and rape.[11] As a result of the almost non-existent judicial system, victims had little recourse to legal protection from their own government. The only major legislative initiative by the Angolan government was designed to provide some protection for IDPs during resettlement or return processes – not during initial displacement, or while they resided in displaced camps. These norms were required because of instances of forced return or resettlement of IDPs to sites that were either vulnerable to UNITA attacks (during the war), in mine-infested areas, or without proper access to basic resources and amenities (including adequate arable land, potable water and other essential services).

The resettlement norms covered the conditions that were required for IDPs to be resettled either in their home areas, or in alternative areas considered secure. The norms were developed in two documents, the Norms for the Resettlement of Displaced Populations (*Normas sobre o Reassentamento das Populacões Deslocadas*) and the implementing *Regulamento* (these *Regulamento* were published by the GoA on 6 December 2002 and served to operationalise these norms). The norms are based on the UN's Guiding Principles on Internal Displacement and on paper they provided minimum standards for return and resettlement. However, the approval of the *Regulamento* after one million[12] IDPs had already returned home is indicative of lack of relevance of the legislation to conditions on the ground. Despite being publicly acknowledged shortly afterwards by the Minister for Social Assistance and Reintegration, João Baptista Kussumua, as an important government initiative to protect Angolans during the process of return,[13] government compliance with the norms remained poor. The UN's Humanitarian Coordinator, Erick De Mul,[14] estimated that only 30 % of those returning did so in compliance with the norms.[15] De Mul presented this as a good result given the prevailing conditions in Angola.

National NGOs and networks

The emerging literature on transnational networks and human rights in the late 1990s pointed to the salience of advocacy networks transnationally and domestically. By building new links among actors in civil societies, states and international organisations, they multiply the channels of access to the international system and make international resources available to new actors in domestic and political social struggles.[16] However, in Angola, the extent of such transnational linkage was relatively low, with national and international advocacy having little impact on the behaviour of the government. The Angolan case would seem to support a more realistic perspective on the effectiveness of human rights advocacy in the absence of a strong domestic reaction in powerful states to advocacy activities and when other interests of international states are involved.

Within Angola, the lack of space for effective civil society interaction with the Angolan government, and difficulties in civil society organisation and mobilisation in areas with active MPLA party cadres, made for a difficult operating environment. Confronted with the increased level of violence that stranded the civilian population during the last phase of the war, national groups and organisations focused their actions and advocacy efforts on calling for the end to hostilities through negotiation and dialogue between the warring forces. Networks such as the Inter-Ecclesiastical Committee for Peace in Angola (COIEPA) and the Network for Peace (*Rede da Paz*) insisted that there was no military solution to the Angolan crisis and that other means should be found. When the war suddenly ended through what amounted to a government military victory, many of civil society's most prominent groups and leaders were unprepared for the changed situation.[17] Other national networks, such as *Fórum das Organisações Não-Governamentais Angolanas* (FONGA), were relatively quiescent with respect to joint public initiatives, although they did raise human rights issues in private meetings with visiting dignitaries, particularly UN officials.

Throughout the period under review several isolated initiatives on human rights were implemented by various Angolan groups in local settings. The main focus of their work was on human rights promotion, rather than protection activities per se, and included human rights awareness activities through training and sensitisation on the Angolan constitution and international human rights instruments. Only a few groups managed to apply a countrywide perspective, mainly as a result of associations with existing and widely spread church networks. For instance, the cultural centre Mozaico (run by members of the Dominican Order) carried out training in various provinces, often in collaboration with justice and peace commissions created within the Catholic dioceses. These training activities brought together representatives from different sectors of the community, in particular the police and local administration, and those who had suffered violations.[18]

More proactive national advocacy initiatives included the ad hoc commission report on human rights violations in Cabinda (in December 2002), the establishment by the Catholic Church of *Movimento Pro-Pace,* and a number of outspoken pastoral letters from the Catholic Bishops Conference. These efforts, coupled with other laudable but isolated initiatives, did not lead to an organised system of monitoring, reporting and advocacy on violations of human rights. While the stated philosophy of many national organisations was that confrontation was not the way to get things done, fear of a negative government response to public criticism played a role. In addition, the GoA proved itself adept at co-opting elements of civil society through direct financial support and/or through the use of quasi-governmental (and patrimonial) organisations such as the Fundação Eduardo dos Santos (FESA).[19]

Donor governments and international human rights protection

In the absence of any serious efforts to provide protection at national level and, indeed, with the Angolan government (itself the main actor responsible for providing protection for its own citizens) being one of the main perpetrators of serious rights abuses through the use of *limpeza* activities, it seems appropriate to consider the efficacy of external actors in putting pressure on the Angolan government to protect their own people and live up to their commitments under domestic and international law.

The 1990s saw many Western governments taking an increasingly aggressive stance against countries where serious human rights violations were occurring, particularly in Africa. Political conditionality became increasingly prominent among donor governments from the end of the Cold War. With Cold War rivalry removed from the equation, Western governments felt freer to pursue basic political concerns vis-à-vis governments of the south. The establishment and strengthening of Western norms and interests, in particular relating to human rights (especially civil and political rights) and governmental systems (democracy, rule of law), assumed greater prominence in the foreign policies of Western governments towards the south.[20]

Despite this increased international prominence of political conditionality, donors maintained a remarkably low profile in dealing with the Angolan government. The most striking aspect of Angola's situation is the lack of donor leverage. Unlike the vast majority of countries in sub-Saharan Africa, Angola effectively managed to insulate itself from pressure from foreign governments. While the GoA has a reputation for being extremely defensive towards international criticism and was unenthusiastic about international involvement after the failure of the Lusaka process, unilateralism in the absence of material power can only go so far. In Angola its independent approach was backed up by oil. Western states did impose conditionality on further international financial institution (IFI) lending, primarily with the objective of improved transparency in accounting for oil revenues. However, throughout the 1990s the Angolan government succeeded in expanding revenues from its offshore oil reserves; either directly through profit sharing, or through oil-backed

lending on the basis of future income. Income from oil was controlled by *Futungo*, with government transparency in the amount and use of these revenues abysmal.[21] This ability to rely on private lending meant that the international donor community had little leverage over the Angolan government using the classic instruments of conditionality on IMF and World Bank loans and bilateral aid. Indeed, Angola's astuteness in setting countries off against each other in oil exploration and extraction meant that throughout these years the international community remained fragmented and largely self-interested in its dealings with the country, giving the government a relatively easy ride with human rights concerns. The horrendous humanitarian situation in the country also meant that Angola continued to receive significant amounts of humanitarian aid, despite the government's failure to account for its oil revenues or invest significant resources into humanitarian aid itself. [22] Such humanitarian assistance was channelled primarily through the UN and NGOs and effectively replaced the Angolan government's task of caring for its own people - a classic catch-22 dilemma in international humanitarian action, given the chronic humanitarian situation in-country.

UN protection initiatives

This weak donor position inevitably led to a weak UN political presence in-country and to weakened UN efforts at human rights protection, particularly after the failure of UN peacekeeping efforts. The UN human rights presence in Angola began in 1996 as a small unit attached to the United Nations Verification Mission in Angola (UNAVEM II). The mission expanded in 1997 under the United Nations Angola Verification Mission III (UNAVEM III), in June of the same year becoming the United Nations Observer Mission in Angola (MONUA). At this point the unit was consolidated into the Human Rights Division (HRD). When, in February 1999 MONUA's mandate was not renewed on request of the GoA, the HRD was asked to continue its activities, though still confined to building the capacity of its institutions and implementing activities for raising human rights awareness.

At the end of 1998 the country began to plunge into war again. The HRD, already handicapped by a limited mandate and in the hope that with time and more confidence the GoA would accept its protection function (including human rights investigation and public reporting), maintained a low profile. Activities included limited training of GoA police and military officials and ad hoc programmes with civil society. The HRD did score some small successes during this time. One example was its support in the establishment of a human rights committee in IDP camps in Viana (on the fringes of Luanda) that was successful in addressing abuses in these camps. However, although most egregious violations were happening around combat areas in the interior of the country, the HRD did not manage to expand to the central highlands and eastern provinces, limiting its action to the capital and the safest provinces in the coastal region. Even in Luanda, the remote location of its office at the edge of town impeded greater communication with partners and provision of public information regarding its activities.[23]

Only in August 2002, after the signing of the April 2002 ceasefire, did the UN Security Council finally provide the new United Nations Mission in Angola (UNMA) with a six-month mandate including 'the protection and promotion of human rights'.[24] The real impact of having a stronger mandate was minimal. A planned expansion in the country through regional offices did not take place, while the deployment of additional officers authorised by the UN resolution to increase the size of the mission was delayed for several months. When the then UN Commissioner for Human Rights, Sergio Vierra de Mello, visited Angola a month before the end of the new mandate, the INGO network in Angola (CONGA), disappointed by the delay in implementing its mandate, produced a letter stressing how violations were still widespread and criticising the UN response as seriously inadequate.[25]

In February 2003 the HRD was merged into a technical unit supervised by the Resident/Humanitarian Co-ordinator and was tasked with completing the residual tasks of UNMA, including the social reintegration of demobilised soldiers, de-mining, and technical assistance in the preparation of elections.[26] The human rights component of the unit was restricted once more, this time being confined to strengthening Angolan human rights institutions. The unit now reports directly to the UN High Commissioner for Human Rights. With this significant dilution of the mandate, a short window of opportunity to boost protection activities at a crucial time in Angola's post-war transition by the UN was lost.

While the HRD prevaricated and failed to take a lead role, the UN Office for the Co-ordination of Humanitarian Assistance (OCHA) and the UN High Commissioner for Refugees (UNHCR) initiated a process to devise a countrywide protection strategy based on creating provincial protection groups and, using the UN Guiding Principles on Forced Displacement, training personnel, both from local authorities and humanitarian organisations. This move was made in the face of widespread human rights violations suffered mainly by displaced groups during the war. A decision was taken early on to include government officials in protection groups at all stages, including local level. The result was that too often this approach meant that non-governmental participants were immobilised from effective action within these forums because of fear of negative consequences and lack of confidence in the process.

OCHA took a strong lead role in these developments, attempting to fill an institutional vacuum within the UN system. Despite the structural weakness of the UN in pushing protection activities with the Angolan government, OCHA was successful in developing an information network that fed some information on human rights violations to the UN Resident Co-ordinator and more broadly within the UN system, allowing the Resident Co-ordinator some scope for mainly private advocacy on human rights issues. OCHA personnel were also active in bringing some acute violations to the attention of local authorities, with varying success. The primary tasks of OCHA field officers included co-ordination of humanitarian activities, local liaison with government and NGO counterparts, needs assessments and, frequently, security co-ordination. As a result, field officers, despite their (at times) strong personal commitments to human rights protection, were often overwhelmed by duties other than protection activities. In addition, field officers typically had a strong background in humanitarian rather than protection activities and, as a result, were often technically unprepared for carrying out protection initiatives.[27]

UNHCR's operations were concentrated around the capital and in only two northern provinces, working both with returning refugees and the resettlement of IDPs. Protection activities focused on the creation of human rights committees to deal with human rights abuses and seek redress before local authorities. These had mixed results, mainly because of high staff turnover and a consequent lack of consistency in approach. Owing primarily to weak in-country capacity, funding difficulties, and an ambiguous commitment to the IDP protection work countrywide, UNHCR did not play a greater role in human rights protection activities, despite recommendations by an internal UNHCR evaluation team that visited the country at the end of 2001 to strengthen their protection activities.[28]

Overall, UN activities in the field of protection suffered from the same structural weakness (that is, lack of leverage / bargaining power) that led to a weak donor effort vis-à-vis Angola. In the absence of strong support from donor nations, the UN was placed in an institutionally weak position in Angola. This was exacerbated by an Angolan government perception that the UN had failed Angola in the previous peace process. As a result protection activities suffered from recurrent subordination to UN concerns to maintain some political presence in-country, presumably in order to maintain a dialogue with the Angolan government and secure a possible UN role in any new peace process.

This weak institutional commitment to vigorous protection activities was exacerbated by a lack of clear ownership within UN agencies on protection activities. There was no effective 'lead agency' for protection strategies and activities within the UN system. A chronic lack of funding by donors for protection programmes, particularly mainstreamed in the UN's Consolidated Annual Appeal's process (which was itself based on a human rights approach), cannot have helped.

Advocacy groups, humanitarian agencies and human rights protection

The most significant action on highlighting (and denouncing the perpetrators of) the serious protection problems faced by the civilian population during the war in Angola was undertaken by international humanitarian and human rights advocacy organisations, most notably at an Arria Formula[29] meeting with members of the UN Security Council in New York in March 2002. The agencies urged the GoA, the UN and the international community to address the humanitarian crisis and pay more attention to the protection needs of the internally displaced. They stressed that lack of good governance, transparency and accountability were impeding greater respect for human rights.[30] Three of the agencies that participated in the Arria Formula, *Médecins Sans Frontières* (MSF), the Human Rights Watch (HRW) and Oxfam, highlighted the lack of attention to large-scale human rights abuses during the war. However, the impact of their advocacy on members of the UN Security Council was minimal.

Outside of such 'high politics', international humanitarian organisations sought to raise public awareness of the human rights situation in Angola throughout this period. The MSF took the strongest public role. MSF sections had a significant presence in Angola throughout the war, being collectively located in almost all Angolan provinces, employing around 150 international staff. Through assisting recently arrived displaced in its therapeutic and feeding centres, the MSF collected hundreds of testimonies that documented a series of violations suffered by those trapped in conflict-affected areas. The MSF published a series of reports on the situation in Angola, using these testimonies to highlight human rights abuses being perpetrated by both sides.[31]

These testimonies and other evidence highlighted that the lack of access of humanitarian agencies to isolated communities because of the conflict - mainly to those populations forced to remain under UNITA control - was a major concern. This concern proved to be founded after the April 2002 ceasefire when a so-called hidden caseload of 500 000 malnourished and debilitated people was 'discovered'. Despite urgent needs in camps where these populations gathered from April 2002 onwards, a hiatus in humanitarian response of almost five weeks occurred – apparently due to a combination of GoA resistance and UN politicking, which effectively impeded the timely delivery of humanitarian assistance.[32]

International human rights organisations did not maintain a permanent presence in Angola. Consequently, their efforts were largely confined to mobilisation of external actors on these issues. The HRW took an active role in highlighting the abuses that were occurring.[33] Their most significant contribution[34] was a critique in July 2002 of the inadequate protection efforts of the GoA, raising the issues of the complete lack of implementation of approved legislative measures guiding return and resettlement processes and the lack of clear ownership among UN agencies in implementing an inter-agency protection strategy that had been developed between 2000 and 2001. The established system and structures did not prevent, for example, cases of forced and disorganised return or settlement of populations to or in areas that were not secure, leaving these populations at risk from UNITA attacks (during the conflict) and/or death or serious injury from landmines and unexploded ordinance.

However, the lack of clear ownership on protection within the UN system became a moot point with the handover of protection activities to the HRD in August 2002. This led to the effective discontinuation by OCHA and, to some extent, the UNHCR, of protec-

tion activities, in the wake of the (brief) expansion in the HRD's mandate to include protection activities. Years of painstaking work, particularly on the part of OCHA, were effectively lost in this 'handover'. The HRW report was criticised by some within the UN system for having contributed to this loss, though lack of capacity and/or willingness within the UN system to collaborate in ensuring a successful handover that built on existing achievements was a critical factor in this loss and subsequent failure to take advantage of the opening offered by the new mandate. In effect, the HRD proved unwilling to or incapable of accepting the responsibility that had been assigned to it to take on this burden.

In addition to participation in UN-led human rights initiatives, humanitarian NGOs periodically organised other ad hoc initiatives with respect to Angola. Most of these initiatives were not public – typically they targeted high-ranking UN officials visiting Angola, or sometimes representatives of donor governments. In 2001, for example, Oxfam took a lead role in organising a joint NGO letter to UN Ambassador Gambari, highlighting the human rights situation – particularly violations of human rights – in Angola. The letter was signed by 12 members of the steering committee of the international NGO network, CONGA.[35] CONGA representatives frequently made joint verbal representations to visiting delegations.

Other, more public, forms of human rights advocacy included a report by Trócaire (in co-operation with the Windhoek-based Group of Indigenous Minorities in Southern Africa (WIMSA) and Angolan NGO *Organização Cristã de Apoio ao Desenvolvimento Comunitario*) on the plight of the minority San people[36] and a statement condemning government tactics in eastern Moxico province by GOAL, another Irish NGO.[37] This statement coincided with final government offensives against UNITA prior to the death of Savimbi that resulted in very high rates of displacement.

In general, NGO protection efforts did not meet with any greater success than other protection efforts in Angola. Public advocacy also occurred very late in the conflict cycle - despite the availability of detailed information on human rights abuses committed by the warring parties. The first major reports were released in late 2001, despite the occurrence of widespread violations from mid-1998 onwards.

Nonetheless, public initiatives did serve to highlight the tragic situation confronting ordinary Angolans and bring some pressure to bear on the Angolan government and the international community to do more. The limits of the strength of the Angolan government are evident in its relations with NGOs involved in public advocacy. Despite issuing a number of strong reports, the MSF did not face significant sustained criticism from the Angolan government and was allowed to continue its humanitarian operations – perhaps indicating the relative importance of the MSF humanitarian operation to the country and also its strong standing internationally, particularly in the wake of receiving a Nobel peace prize. Given this apparent strength, the lack of broader joint public initiatives by humanitarian NGOs working in Angola (through networks such as CONGA) is perhaps more indicative of weak inter–NGO co-ordination mechanisms (both in-country and outside), at least with respect to human rights initiatives, and a failure of these agencies to mobilise themselves for this type of collective action. It should also be noted that the one NGO taking a lead in this area – the MSF - did so largely by adopting a 'go it alone' policy with respect to the development and release of these reports. The reluctance of some humanitarian NGOs to engage in human rights protection activities because of mandate issues and/or service delivery imperatives also played a role in inhibiting co-operation in this area. On-going uncertainty regarding NGO registration in-country may have conditioned relatively passive behaviour among international NGOs with regard to human rights. However, it should be noted that the humanitarian presence in government-controlled areas – with some 100 international NGOs working in government garrison towns and secure areas throughout the country - also acted as a form of de facto accompaniment of the civilian population,

providing some measure of protection in addition to material support.

Analysis of protection activities

Synthesising this analysis of the various levels of protection activities presents a disappointing picture of its efficacy in Angola in the period under review. While the Angolan government cannot be blamed for rights violations carried out by UNITA, it can be held responsible for its failure to protect its own people from the negative impact of its own *limpeza* activities and for violations that were perpetrated by its armed forces.

Donor governments' response to these violations was muted in the extreme, with little concerted effort on the part of Western governments to put serious pressure on *Futungo*. Given the documented trend towards the more robust human rights protection by Western governments in the south during this period, the relative lack of economic leverage these governments enjoyed over the Angolan government and economic interests – in particular oil - must have played a decisive role in this weak response.

It is a cliché often repeated by UN officials that the UN is only as strong as the member states will allow it to be. This is certainly true of many of the UN's human rights activities in Angola. A weak mandate after the pull-out of MONUA left the HRD isolated and hanging on by a shoestring as the only quasi-political UN presence in-country. However, the failure of the HRD to capitalise on its expanded mandate from 2002 onwards, even modestly, is indicative of a lack of boldness on the part of the one UN unit specifically tasked with human rights activities in Angola. The truth is that the HRD rarely set foot outside Luanda, was politically hamstrung from the beginning, and when it finally had the mandate to do something meaningful, failed to accept the challenge. In many respects, the HRD represented a face-saving device for the perceived failure of the UN political presence in Angola's first peace process, and as such, was there primarily to maintain the fig leaf of a UN political presence.

On the humanitarian side, UN agencies, principally through OCHA and the activities of the Humanitarian Co-ordinator, Erik de Mul, integrated some degree of protection activities - restricted primarily to collection of information and analysis of patterns of violations - into their operations, with some success, albeit limited. However, limited political leverage and intermittent donor commitment to bringing pressure to bear meant that their activities could never match the scale of violations occurring throughout the country. UN protection activities were principally guided by the medium-term objective of strengthening GoA institutional capacity for protection and generally (with one or two exceptions) avoided more publicly confrontational approaches.

In addition, too often OCHA field staff tasked with protection responsibilities lacked sufficient training, capacity and support to truly take on these tasks in a comprehensive way – the day-to-day imperatives of humanitarian activities frequently took precedence over protection activities.

Equally, international NGOs working in the humanitarian sector failed to present a consistent public message about what was occurring in Angola. While the quality of NGO co-ordination was inconsistent throughout the period, some private CONGA advocacy did take place. However, at no point did CONGA publicly draw attention to the human rights situation in Angola. Individual humanitarian NGOs – most notably the MSF – did publicise some aspects of the human rights situation, though to little effect. In the same vein, international human rights organisations, most notably the HRW, provided a more comprehensive analysis of the human rights situation, but again to little effect in terms of changing the behaviour of the Angolan government. Angola's low international profile, despite its oil resources and chronic humanitarian crisis, cannot have helped in mobilising interest. National human rights organisations remained weak throughout the war, with some limited advocacy activities again having little effect, and are indicative of the generally weak and marginal status of civil society actors in Angola.

The new post-war situation

The ending of the armed conflict between UNITA and the GoA in April 2002, and the subsequent change towards a more stable situation throughout most of the country, has fundamentally changed the human rights landscape of Angola. With the exception of the continued low-intensity conflict in Cabinda, the absence of war means that many of the issues of recent years, in particular violations of international humanitarian law, will become less significant in the medium term. The absence of war also removes one of the major excuses for whole-scale diversion of resources and tolerance of endemic corruption. Given Angola's vast natural wealth and the expanded potential for exploitation of this wealth in the context of peace, access to economic and social rights will become even more pertinent. Nevertheless, where large-scale rights violations continue to occur in Angola – such as in the recent forced expulsions of non-nationals from diamond areas in north-east Angola, or continued violations in the oil-rich Cabinda enclave - the international community continues to face the same weaknesses in pressuring the Angolan government.

However, the increased levels of debt which Angola accepted in order to win the war, and its current efforts to access IMF funds, may provide one notable leverage point –with respect to both human rights violations in places such as Cabinda and further reform of its administrative, financial control and budgeting systems in order to ensure greater transparency in the use of government revenues (particularly oil).

Equally, there is Angola's own desire to be perceived as a leading southern African country – as evidenced by its recent tenure as a non-permanent member of the UN Security Council (ending at the end of 2004) and its equally recent chairmanship of the Southern African Development Community (SADC). While these appointments represent major foreign policy successes for the Angolan government and can be construed as external recognition, and indeed legitimation, at regional and international levels, such leadership positions may provide some scope for pressure to be brought to bear. Leadership involves duties in addition to benefits of prestige.

Lessons learned and future challenges

What lessons can be drawn from this case study? When a repressive government has financial autonomy from international financial institutions controlled by Western governments, is not overly reliant on external bilateral aid, and is clever enough to play off Western countries against each other in the allocation of natural resources (in this case oil), it can apparently effectively isolate itself from significant pressure to reform.

That said, the Angolan government still borrowed from somewhere to finance its war – but no serious attempt appears to have been made to focus attention on these private sources of funds or to use other means of leverage on the government. In the same way, foreign governments with oil interests have apparently not tried to present a united front on Angola. A troika of the US, Russia and Portugal had taken a lead role in the Angola peace process, but did not act as a lead group in engaging with the Angolan government on issues related to human rights.

Beyond this glaring inability or unwillingness of the international community to exercise influence, lessons at micro level may include the following:

- The need for continued development of Angola's own judicial system and strengthening of the rule of law, setting up the necessary mechanisms for achieving the redressing of human rights violations.
- The need for support for genuine nascent civil society institutions, combined with an analysis of the hegemonic activities of the Angolan government with respect to civil society organisations, and the development of strategies to cope with this. Such an approach must include an emphasis on state/society interaction and strengthening the rule of law.
- The need to allow greater discussion around the issue of impunity regarding the most egregious violations and crimes of war committed during the civil war. The sub-

stantial participation in this discussion of groups from the civil society including the churches may serve to ensure a proper reconciliation process. When and how such a sensitive process could take place should clearly be in the hands of the Angolans themselves, particularly Angolan civil society and those most affected by the war.
- The need for a clearer delineation of responsibilities within the UN humanitarian system for human rights protection activities and for these activities to be properly resourced and supported, including the implementation of effective models for the UN system,
- The need for greater coherency among humanitarian NGOs on possible joint mechanisms for protection activities. Joint frameworks developed outside a particular country context may provide the necessary 'cover' to allow humanitarian NGOs to engage in public initiatives on human rights violations in a coherent manner.

Conclusion

Angola is at a crossroads. The country now has an opportunity for broad-based development that could benefit the whole population. However, continued appropriation of community resources by elite groups for personal gain remains a major obstacle to national development. The war has ended, but issues of structural inequality, ethnicity and lack of accountability of the governing class are ever present. Unresolved, these issues may provide the basis for an upsurge in a new phase of contentious politics in the medium term. The country is currently going through a process of normalisation in the post-war period. Key human rights interventions should target the way in which this normalisation process takes place in order to protect human rights, including access to economic and social rights such as education and health, and should seek to influence this process so that the ultimate outcome of normalisation is a more equitable society that benefits all Angolan citizens equally. One can only hope that Angola may soon realise the promise of its early idealism to the benefit of the Angolan people.

Amanhã
entoaremos hinos à liberdade
quando comemorarmos
a data da abolição desta escravatura

Nós vamos em busca de luz
os teus filhos Mãe (...)
Vão em busca de vida.[38]

Notes

1 This paper was developed from an earlier draft prepared for delivery at the 2004 annual conference of the Peace and Justice Association in San Francisco, 14-17 October 2004.
2 Médecins Sans Frontières, *Angola, sacrifice of a people*, MSF, 2002, p 15.
3 Rob Kevlihan, 'Sanctions and humanitarian concerns: Ireland and Angola, 2001-2' in *Irish Studies in International Relations*, 14 2003, p 95.
4 Tony Hodges, Angola from *Afro-Stalinism to petro-diamond capitalism* (Oxford, 2001), p 14.
5 This account is based on an unpublished document by Allan Cain, Country Director of Development Workshop, provided to one of the authors during his time in Angola from 2000 to 2002. Mr.Cain has been resident in Angola since the 1970s and was present when these events took place. Any opinions, errors or omissions are those of the authors and not of Mr Cain.
6 Andrea Lari, *Returning home to a normal life? The plight of displaced Angolans*, ISS Paper 85, Pretoria, February 2004, p 2.
7 The existence of such activities and their impact on ordinary people are documented in much more detailed MSF reports, including *Angola: behind the façade of 'normalisation' – manipulation, violence and abandoned populations*, Médecins Sans Frontières, Luanda, 2000.
8 Comissão dos Direitos Umanos da Orden dos Advogados de Angola, Diagnóstico preliminar sobre o sistema da administração da justiça em Angola – Perspectiva Estático-Estrutural, Luanda, Março 2001, p 71.
9 Personal correspondence by the author with a human rights specialist who frequently visited the country in those years and produced two reports, in March 1998 and April 2001.
10 Office for the Coordination of Humanitarian Affairs in Angola (OCHA), *Humanitarian situation in Angola – monthly analysis*, Luanda, January 2002.
11 Human Rights Watch, World Report 2003, 2003, p 15.
12 Lari, op cit, p 6.
13 Per speech given by Kussumua at the launch of the UN's Consolidated Annual Appeal in

Luanda on 26 November 2002.

14 De Mul is also the UN Resident Co-ordinator, Deputy Special Representative of the UN Secretary-General, and as such, acting officer in charge of the United Nations Mission in Angola (UNMA).

15 IRIN, 2002, 'Interview with Erick De Mul, UN Humanitarian Co-ordinator, 13 Nov 2002' available at <www.reliefweb.int/w/rwb.nsf /ByCountryByMonth/0003b86e61b3b6e085 256b1f0075614c?OpenDocument&Start= 6.22.37&Count=30&Expand=6.22> [28 August 2004].

16 Margaret E Keck and Kathryn Sikkink, *Activists beyond borders: advocacy networks in international politics*, Cornell University Press, 1996, p 1.

17 For an analysis of the strengths and weaknesses of civil society actors see N Howen, *Peace building and civil society in Angola: a role for the international community*, London, October 2001.

18 Other groups, such as the Action for Rural and Development and Environment (ADRA), provided training to community representatives in various provinces. More localised interventions worth mentioning include Education for Citizenship in Huila province by Fr Pio Wakussanga and the Human Rights Programme led by Development Workshop in Huambo province.

19 For more information about FESA, see C Messiant, La Fondation Eduardo dos Santos (FESA), in *Politique Africaine 73*, March 1999, p 83.

20 Olav Stokke, 'Aid and political conditionality: core issues and state of the art', in Olav Stokke (ed), *Aid and political conditionality, London, Frank Cass*, 1995, p 68.

21 For further information on this aspect, see Human Rights Watch, *Some transparency, no accountability: the use of oil revenue in Angola and its impact on human rights*, January 2004, Global Witness, A crude awakening, December 1999, and *All president men*, March 2002.

22 Common Country Assessment 2002, Angola. *The post-war challenges*, Luanda, 2002, chapter 4, pp 84-94.

23 Personal correspondence by the author with a human rights specialist who frequently visited the country in those years and produced two reports, in March 1998 and April 2001.

24 UN Security Council Resolution 1433 (2002).

25 Open letter from the CONGA NGO network, Angola, to the United Nations High Commissioner for Human Rights, Sergio Viera de Mello (draft), Luanda, February 2003, p 2.

26 For details on the unit's main activities, visit <www.ohchr.org/english/countries/field/angola.htm>

27 Human Rights Watch, *The war is over: the crises of Angola's internally displaced continues*, July 2002, p 8.

28 Ibid, p 9.

29 This is a mechanism that allows members of the Security Council to consult with non-state actors.

30 Human Right Watch, World Report 2003, 2003, p 16.

31 Including *Angola: behind the façade of 'normalisation' – manipulation, violence and abandoned populations*, Médecins Sans Frontières, Luanda, 2000, and *Angola, sacrifice of a people*, MSF, 2002.

32 Fabrice Weissman (ed), *In the shadow of 'just wars', violence, politics and humanitarian action*, Cornell University Press, Ithaca, New York, 2004, p 109.

33 Andrea Lari was a researcher with the HRW at this time and was involved in writing this report.

34 Lari, op cit.

35 Known as the CONGA Liaison Group.

36 Trócaire, 2004, *Where the first are last: San communities fighting for survival in southern Angola*.

37 GOAL Press Release, 11 February 2002; 'Angolan fears raised' available at <www.goal.ie/html/news room/angolian_fears_raised10202.htm> [26 Sept 02] [Query: Angolan_fears?]. Rob Kevlihan was country director with GOAL in Angola when this statement was released.

38 From the poem 'Adeus à hora da largada'xxxix of Agostinho Neto (1922-1979), first president of the Popular Republic of Angola. Approximate translation is as follows: Tomorrow / We'll sing sons of liberty / When we'll celebrate / The date of the abolition of this slavery / We are looking for the light / Your sons, Mother / Are looking for the life.

AFRICA WATCH

GUINEA-BISSAU
Between conflict and democracy

PATRÍCIA MAGALHÃES FERREIRA

Guinea-Bissau is currently living through a decisive period in its political history. Marked by governmental instability, particularly since 1998, the country suffered another coup d'état in September 2003. Since then a transitional period has led up to the March 2004 legislative elections. It is hoped this transitional arrangement will end after the presidential elections scheduled for March 2005.

This commentary analyses recent political developments and current political and military dynamics in the context of the many political and economic challenges facing Guinea-Bissau. It also discusses the possible outcomes of the transition and outlines the main challenges facing the country's government in the near future.

Introduction

Guinea-Bissau became independent in 1974, after a 13-year liberation struggle against Portuguese colonial rule by the *Partido Africano da Independência da Guiné e Cabo Verde* (African Party for the Independence of Guinea and Cape Verde - PAIGC), which had been formed in 1956 and was led by Amílcar Cabral until he was assassinated in 1973. One of the poorest countries in the world, Guinea-Bissau's social indicators are well below the sub-Saharan average. Two-thirds of its inhabitants live below the poverty line.

Although Guinea-Bissau is a small country (only 36 120 square kilometres) its 1,5 million people are among Africa's most diverse in terms of ethnic and religious affiliations. Guinean society comprises some 40 ethnic groups, which are generally classified under five headings: the Balante (30%), the Fula (20%), the Mandingo (13%), the Papel (13%) and the Manjaco (14%). Some 45% of the population practise traditional religion, 40% (mainly the Fula and the Mandingo) are Muslim, and 13% are Christian. This diversity is also evident at linguistic level. Although Portuguese is the official language and French has increasingly been used in recent times, various local languages are also spoken.

Between 1974 and 1980 Guinea-Bissau and Cape Verde were ruled as separate countries by the PAIGC under the presidency of Luís Cabral, Amílcar Cabral's brother. The original intention was that the two territories would soon unite, although the reconciliation of the disparate interests of the two was not particularly easy. A major reason was that the party, public administration and armed forces of Guinea-Bissau were dominated by the *mestizo* intellectual minority that represented only 2% of the Guinean population. On 14 November

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1980 Major João Bernardo ('Nino') Vieira mounted a successful coup in Bissau after disagreements with Luís Cabral over proposed constitutional amendments. The coup ended all thought of union with Cape Verde. Relations were severed, and a few months later the Cape Verdean wing of the PAIGC renamed itself and formed a new government for the islands.

The first decade of the regime in Guinea-Bissau was marked by power struggles within the party, the abolition of the post of prime minister, and the emergence of a personality cult through a concentration of presidential powers. In 1985 Vice-President Paulo Correia was among six leading political figures who were executed for attempting a coup.

Under pressure from the international community, especially France and Portugal, Nino Vieira allowed a gradual internal liberalisation of the political regime, with a view to implementing full democracy. In 1990 he accepted the principles of a multiparty political system. The years that followed represented a period of transition during which new political parties were formed, the freedom of the press was established, trade union activity was permitted, and the death penalty was abolished. Though the first multiparty elections, in July/August 1994, did not lead to any change in the allocation of power,[1] they marked the beginning of an increase in political activity on the part of the opposition.

The 1998–1999 conflict

Despite the economic progress from the mid-1990s onwards, Nino Vieira's regime was weakened by its ingrained authoritarianism, which fostered discontent among the political opposition and the military. Attempts to modernise the armed forces by promoting younger soldiers and demobilising the veterans of the liberation struggle who had constituted the armed wing of the PAIGC, delays in the payment of salaries, and political interference in the management of the military all contributed to the emergence of violent conflict. The trigger for revolt was the forced retirement of the Chief of the Armed Forces, Brigadier Ansumane Mané, because of his alleged assistance to the separatist rebel movement in Casamance province in neighbouring Senegal.

The military uprising of 7 June 1998 led to nine months of civil war during which 2 000 people died, economic and social activities were paralysed, and most of the existing infrastructure was destroyed. Despite the intervention of the troops of Guinea-Bissau's neighbours, Senegal and Guinea-Conakry, in support of the president, and prompt expressions of international disapproval of the revolt against the democratically elected government, the military junta leading the insurrection had the support of the population and of most of the armed forces.[2]

After various negotiation attempts and failed agreements,[3] the armed conflict ended with the signing of the Peace Agreement of Abuja in November 1998, following the combined mediation efforts of the *Comunidade dos Países de Língua Portuguesa* (CPLP – Community of Portuguese-Speaking Countries)[4] and the Economic Community of West African States (ECOWAS). The agreement envisaged a sharing of power between the belligerent forces; the creation of a government of national unity that would facilitate the holding of elections; the withdrawal of foreign troops from Guinea-Bissau; and the establishment of a small ECOMOG (ECOWAS Cease-Fire Monitoring Group) peace-keeping force to support the implementation of these terms.

However, the creation of the new government of national unity in February 1999 failed to prevent the escalation of tensions between the president and the military, especially over disarming the presidential guard. After several ceasefire violations and meetings between Nino Vieira and Ansumane Mané, Nino Vieira was deposed in May and was granted political asylum by Portugal. In the meantime, the military junta announced that it had no intention of assuming power, and expressed its confidence in the leader of the transitional government, Francisco Fadul. A steady improvement in political and security conditions in Guinea-Bissau culminated in the withdrawal of the last ECOMOG peacekeeping forces in July 1999.

But the positive internal political signs from the transitional government – including transparency in the management of state resources, the introduction of human rights monitoring mechanisms, a reduction in military interference in the political sphere and the involvement of civil society in the reconstruction of the country – were not complemented by international support, either financially or politically. Of the US$220 million pledged at the May 1999 donors' Round Table Conference for Guinea-Bissau in Geneva, only US$6 million was transferred to the country between the end of the conflict and the holding of elections. This led to a general feeling of frustration and disappointment in Guinea-Bissau: the international community was regarded as having reneged on its commitments. The delays in the allocation of international funds, allegedly because of the departure of President Nino Vieira (which was regarded by the donors as a 'new political fact'), made it impossible for the government of national unity to carry out its programmes, thus delaying important development measures.

The multiparty elections of 1999 and Kumba Ialá's government

Kumba Ialá and the *Partido da Renovação Social* (PRS – Social Renewal Party) won the legislative and presidential elections at the end of 1999,[5] thanks largely to the Balante vote. This ethnic group, which made up Amílcar Cabral's main fighting force during the national liberation struggle, had subsequently been marginalised by the Nino Vieira regime.

The internal disagreements that were to impede the normalisation of Guinean political life demonstrate that just as formal peace does not necessarily imply stability, so the formal holding of elections does not guarantee a successful democratic transition. After the elections, the contest for legitimacy between a democratically elected government and a military junta whose leader continued to have status equal to that of the president of the republic led to the deterioration of an already very fragile political balance. The problem was 'resolved' by the assassination of Brigadier-General Ansumane Mané in November 2000 in the course of an unsuccessful attempt by the government to reassert control over the army. This introduced new dynamics to the situation and instantly produced a new martyr in the eyes of the population. It brought the issue of religious identity into the public domain, as the Muslim leaders of the whole region went to Bissau to pay homage to the brigadier and mourn his death. But the incident contributed to the creation of new 'Ansumanes' within the heart of the military. These were individuals capable of exercising a great deal of influence over the political situation.

At governmental level the relationship between the two parties that formed the base of the elected government – the PRS and the *RGB-Movimento Bafatá* (RGB-MB) – became problematic. A particular source of dissatisfaction was the president's constant replacement of ministers and rotation of high-ranking officials,[6] chosen mainly according to political criteria rather than on merit, which weakened the stability and legitimacy of the newly formed government, and culminated in the collapse of the coalition. The dissolution of the alliance occurred in January 2001, after another unexpected ministerial reshuffle that had been ordered by the president led to the mass resignation from the government of all RGB-MB members. This aggravated the atmosphere of political instability (given that the PRS lacked the parliamentary majority necessary to govern), and exacerbated the tensions between the rival political forces, as no consolidation of a democratic culture had been achieved within the country's public institutions.

Between April and May 2001 the country in effect operated without a government because of continual friction between the legislative and executive sectors of the administration. The dismissal of senior judges of the Supreme Court on political grounds – a clear violation of the Guinean constitution and international law – illustrated the threats to the independence of the judiciary and to the rule of law posed by Ialá's regime.[7] The occurrence of various unsuccessful coups d'état in 2001 reflected the fragility of the democratisa-

tion process in Guinea-Bissau and the government's lack of internal and external credibility. The competence of the PRS to manage the transition effectively came increasingly into question, and the incapacity and inexperience of the various members of the administration affected its ability to satisfy the most basic needs of the population.

In 2002 the criticism levelled against Kumba Ialá's rule increased. Social dissatisfaction manifested itself in constant protests and strikes throughout a capital city in which not even the provision of water and light was assured. At the external level, the apparently unconditional support of the international bodies that had welcomed the formation of a democratically elected government started to wane from 2002 in response to the low level of efficient internal governance. For example, the International Monetary Fund (IMF) suspended budgetary assistance to the Guinean government and abandoned all attempts to implement its Poverty Reduction and Growth Facility (PRSP), an essential component in the partnership between the Guinean government and the donor community.

As the president's political base narrowed he became increasingly reliant on ethnic support. In effect, the 1998 conflict and the uneasy post-electoral balance of power led to an increase in the importance given to ethnic identity. At that time the Balante held the overwhelming majority of high-ranking and intermediate posts in the public administration; so much so that various commentators spoke of the 'Balantasation' of Guinean political life.

The constant violations of human rights that were perpetrated in this period contributed to the deterioration of internal stability. The limitation of access to newspapers experienced by some of the opposition parties, the closing of radio stations and the prohibition of television transmissions reflected the constraints that were placed on the media in Bissau. Moreover, the dissolution of the National Assembly by Kumba Ialá on 14 November 2002 illustrated the dominance of the executive over the legislature and judiciary, and the weakness of the country's public institutions. The government's collapse in the same month plunged the country into a situation of total paralysis, for which the new executive named by the president seemed unable to offer a viable alternative.

The constant replacements of prime ministers and other members of the government on presidential whim, coupled with his unstructured speeches and irrational public announcements (such as his intention of moving the capital to Buba, a small city 200 kilometres away from Bissau, or his threat to invade Gambia) raised doubts about President Ialá's mental health, particularly from 2002 onwards.

The holding of early elections was seen as the only way out of the profound crisis in which Guinean society found itself. Nevertheless, the elections set for 20 April 2003 were delayed several times – to 6 July and then to 12 October – allegedly because of the lack of an accurate voters' roll. The delays threatened to compromise the legality of the deadlines stipulated by the country's electoral law. Moreover, accusations by opposition parties of fraud perpetrated during voter registration, which were confirmed after investigation by the National Electoral Commission, threatened the validity of the voting process, which might have led to a complete breakdown of order. In the light of these considerations, the United Nations (UN) Security Council warned in June 2003 that there was a strong possibility that the country would slide into renewed conflict.[8]

At the beginning of September various events combined to exacerbate the crisis of instability in Guinea-Bissau. The prime minister, Mário Pires, publicly declared that an electoral victory for the opposition would result in civil war. Observers interpreted this as proof that the government and at least a part of the PRS would refuse to relinquish power if the vote went against them. It was also rumoured that weapons were being distributed among the population by the government, and that Balante youths were being recruited into the armed forces should the PRS be defeated in the legislative elections.[9] Kumba Ialá's decision to confer higher rank

on the members of the military command was interpreted as an attempt to regain the support of the military, who had long since lost confidence in him. It is thought that the way in which Kumba Ialá was able to guarantee increased salaries and benefits for the military commanders, using funds obtained during visits to Libya and Nigeria, contributed to the postponement of the pending coup d'état.

The coup d'état of 2003

When one considers the deteriorating standard of living of the population and the erratic behaviour of President Kumba Ialá, the coup d'état carried out by General Veríssimo Correia Seabra was not only foreseeable, but also desired. Various political actors were informed of the intended coup and although the international community officially deplored the unconstitutional seizure of power, this seemed a lesser evil than the endless postponement of elections and the resulting increase in instability. The UN Secretary-General himself recognised that the coup d'état, reprehensible as such actions are in legal terms, had occurred after a series of democratic norms had been violated, and represented the outcome of an unbearable situation. However, he warned that there was a need to prevent democratically elected governments in post-conflict situations from overstepping the basic practices of good governance.[10]

Immediately after the coup d'état, political parties, trade unions, representatives of the religious communities (Catholic and Muslim) and of the armed forces created an ad hoc commission, comprising 12 civilians and four members from the military, to define the terms of reference for a transitional government and a consultative council. With the support of the Brazilian ambassador in Guinea-Bissau (representing the CPLP) and UN representatives, an ECOWAS ministerial delegation visited Bissau, where it had meetings with the leaders of the military and the deposed president. As a result of these consultations it was agreed to form a broad-based transitional government, which would prepare for the holding of credible, free and fair legislative elections. The PAIGC and the *Plataforma Unida* immediately announced their willingness to participate in the transitional government. The *Partido Unido Social Democrata* (PUSD) was the only party to openly refuse, on the grounds that it disagreed with the manner in which the negotiation process had been conducted.

On 17 September Kumba Ialá declared that he was resigning to allow for the nomination of a civilian government. He appealed to the international community to provide material and financial support for the electoral process. Similar calls for assistance were issued by the UN Peace-Building Support Office (UNOGBIS) and the ECOSOC Ad Hoc Advisory Group on Guinea-Bissau.[11]

General Veríssimo Seabra's intention of rapidly transferring the interim presidency to a civilian government, combined with the almost immediate return of the military dissidents to their barracks, contributed to the speed with which negotiations were conducted. The Charter of Political Transition, which envisaged the holding of legislative elections within six months (by 28 March 2004) and presidential elections one year later (by 28 March 2005), was signed on 28 November 2003. Nevertheless, dialogue between the political and military factions became strained when those who had taken part in the military coup appointed Artur Sanhá, who had been the secretary-general of the deposed president's party, to the post of interim prime minister, a choice that gave rise to a wave of protest.[12] Some interpreted this nomination as an attempt by the military to guarantee, to some extent, the retention of power by the Balante, and the right to project this power during the transition period. Given that the military is largely composed of Balante, this caused serious concern.

After intense negotiations, and under pressure exerted by the CPLP and ECOWAS – acting on a mandate from the leadership of the African Union – the charter was accepted by 23 of the 24 registered political parties in Guinea-Bissau. The nomination of businessman Henrique Rosa for the presidency was carried by consensus, mainly because of his

impartiality and lack of party affiliations. The new president was installed on the day that the Charter of Political Transition was signed. The charter established the *Conselho Nacional de Transição* (CNT – National Transition Council) as the supreme organ of state administration until the legislative elections had been held. The governmental team, which took office on 3 October 2003, did not include any well-known Guinean politicians, a clear consequence of sub-section 4 of article 11 of the Charter of Transition, which stipulated that all those who had served in the transitional government were barred from participating in the legislative elections.

The transitional government immediately undertook measures to re-establish the normal functioning of democratic institutions. These included prompt efforts to straighten out the functioning of the media; the nomination (on 27 November) of a new attorney-general; the election (on 16 December) of a chief justice and deputy chief justice of the Supreme Court of Justice; the payment of part of the salaries owed to civil servants; and a clear focus on the strict management of state resources through the preparation of a general state budget for 2004. The payment of salary arrears, which had reached unsustainable levels during the regime of Kumba Ialá (with about ten months' salaries owing), turned out to be particularly problematic. The reasons included the existence of thousands of 'ghost' civil servants, and the reluctance of international institutions to release funds for this purpose. Another issue that remained unresolved was the regularisation of accounts between suppliers and the state. This was in large part attributable to the inability of the state to generate the internal resources to pay for certain basic requirements, such as food for the armed forces and fuel for the Bissau power station.

The PAIGC returns to power

At the end of the six-month period provided for in the Charter of Political Transition, the minimum internal conditions for the holding of elections had been met. The voter registration process (earlier thought to have been manipulated by Kumba Ialá) had been completed. However, in the meantime various political parties had expressed their concerns that foreign election observation (with overall co-ordination by the UN, in conjunction with the UNDP) would occur only during the election itself. They believed it was required throughout the voter registration process, when fraud was most likely to take place. The National Electoral Commission admitted that certain flaws had occurred in the registration process: some voters had acquired double registration; others had been transferred to constituencies outside their areas of residence; and some had been omitted from the roll. However, the commission believed that these irregularities had not occurred at a level that would jeopardise the holding of the election on the due date. Internal financial problems also created controversy because the transitional government declared that it lacked the means to finance the election campaigns of the various political parties. This problem was related to the successive postponements of the elections, which had been variously scheduled for 20 April, 6 July and 12 October 2003. This had resulted in high financial overload for the parties. As for the arrears in the payment of civil servants' salaries (an issue that had to be addressed to avoid corruption during the election campaign), the UNDP announced a few days before the start of the elections that funds had been made available to settle the amounts owed for January and February.[13]

The election, which began on 6 March, took place without any political violence. Various incidents in the north, however, which were allegedly perpetrated by dissident groups of the MFDC, were interpreted by some as an attempt to destabilise the country and postpone the elections. There were unconfirmed reports that the Guinean armed forces had failed to oppose the activities of these groups.[14]

With regard to the conduct of the elections, there is evidence that some irregularities occurred, despite declarations by observers that they had been free, just and transparent.[15] Individuals reported having received threats such as the 'evil eye' if they voted for a certain

political party. The prime minister and the chief of police were seen to be transporting voting ballots, in clear violation of the election rules. In some areas, several parties bought votes in exchange for bags of rice, a practice common in former elections. There were also rumours that several cards that had been issued during the census might have been used for voting more than once. Moreover, technical difficulties that prevented the opening of several voting stations, mainly in the capital, made it necessary to extend the voting period by a few days. These irregularities were considered of minor importance when compared with the positive overall evaluation of the election by external observers. The results were not followed by major protests from any of the parties and coalitions involved.

The same cannot be said for the publication of the results, which was delayed, causing a political hiatus and consequent tensions among the parties. Even after the official proclamation of victory by the PAIGC, the tardiness in the announcement of the actual results eventually caused the PRS to threaten to form a parallel government. The official reason for the delay given by the National Electoral Commission was the need to investigate the claims of irregularity that had been received after the closing of the polls. However, some sources indicate that the delay was caused by negotiations between the PAIGC and a military wing linked to the PRS. If it is true, this information would confirm that the leaders of the military were apprehensive about the possibility of being pushed aside by a PAIGC government. It would also underscore the influence of the military over political life in Guinea-Bissau.

Seventy-six per cent of the total number of registered voters participated in the election. Of the 15 political parties listed on the ballot papers, only three parties and two coalitions succeeded in having members elected as deputies to the National Assembly. (See the table below.) At first sight, the way in which the election campaign and the socio-political situation in Guinea-Bissau developed suggested that the parties emerging from the elections with the strongest support were the PAIGC and the PUSD. (As it happened, the most popular parties turned out to be the PAIGC and the PRS.)

The PAIGC conducted a sober election campaign and did not respond to provocations or accusations from other political parties. In addition to the traditional promises made to improve infrastructure and health and education systems (which are common to the electoral programmes of all parties), Carlos Gomes Junior stressed the need for far-reaching reform of the public administration of the country. The possibility that this party would win the elections increased with the return of many former leaders of the PAIGC who had earlier defected to other political groups. The PAIGC won, but its victory margin was not as wide as had been predicted. Lacking a parliamentary majority, the party was forced to establish alliances with other parties after the elections.

The results recorded for the PUSD also fell below expectations. Its main platform in the election campaign had been what its leader labelled 'the culture of work', which would be rewarded by 'fair salaries paid on time'. He promised the eradication of ghost workers and corruption. Indeed, the PUSD's leader, Francisco Fadul, who had led the party's executive from December 1998 to February 2000, managed to guarantee the salaries of the civil servants during this period. He exploited this achievement to boost his popular credibility. However, during the campaign many Guineans believed that the PRS might win the elections because of its support from the Balante. This reasoning might have led some sectors of the population to vote for the PAIGC instead of the PUSD, to avert a PRS victory.

The political party that won the second-highest number of votes was the PRS. In some districts (Cacheu, Oio and Tombali) the PRS achieved first place in the voting results. The ethnic issue, though not a deciding factor, played a significant role in the PRS campaign, which benefited from the Balante vote. In part, the PRS campaign was influenced by the shadowy omnipresence of Kumba Ialá, who

continued to determine most of the political decisions taken by the party. Although he had been legally prevented from participating in the country's political life until 2008, Ialá announced just a few days after the beginning of the election campaign that his house arrest had been lifted and he was returning to politics. He was also seen in Gabu and Bafatá (cities that are represented by a great number of deputies), where the PRS held political rallies.[16]

Only two of the other parties contesting the election were able to elect deputies: the *União Eleitoral* (UE), a coalition of four minor parties led by Joaquim Baldé; and the *Aliança Popular Unida* (APU) of the former presidential candidate Fernando Gomes. Therefore, the former Bafatá Movement no longer has any parliamentary representation. In the first half of the nineties it had tried to present itself as a political alternative to Nino Vieira's regime. More recently, it had been divided into two wings, one led by Savador Tchongó and the other by Helder Vaz. Despite being a well-respected member of the Guinean elite who maintained a solid opposition to Kumba Ialá, Helder Vaz had little standing among the population. His credibility was also affected by his public support of the appointment of Artur Sanhá as interim prime minister without having consulted his party's main supporters (the Guinean diaspora).

Without an absolute majority, and having failed to negotiate successfully with the PUSD,[17] the PAIGC finally entered a parliamentary alliance with the PRS, thus ensuring the necessary conditions and support for Carlos Gomes Júnior's government and legislative programme.[18] This agreement was reached in exchange for two senior positions in parliament's governing body and a number of high-ranking appointments in government departments and parastatal organisations. This arrangement led to protests and accusations of clientelism from the other political parties. The hard wing of the former liberation movement expressed its concerns about the PAIGC's dependence on the PRS, arguing that it would limit the government's ability to act – for instance, to conduct criminal investi-

28-30 March 2004 – Election results

PARTIES	*VOTES*	*%*
Partido Africano da Independência da Guiné e Cabo Verde (PAIGC)	145.316	33,88
Partido da Renovação Social (PRS)	113.656	26,50
Partido Unido Social Democrata (PUSD)	75.485	17,60
Plataforma Unida (PU)	20.700	4,83
União Eleitoral (UE)	18.354	4,28
Partido Democrático Socialista Guineense (PDS)	8.789	2,05
União para a Mudança (UM)	8.621	2,01
Resistência da Guiné-Bissau (RGB)	7.918	1,85
Partido da Unidade Nacional (PUN)	6.260	1,46
Aliança Popular Unida (APU)	5.817	1,36
União Nacional para o Desenvolvimento e Progresso (UNDP)	5.042	1,18
Movimento Democrático Guineense (MDG)	4.209	0,98
Fórum Cívico Guineense/Social Democrata (FCG/SD)	4.202	0,98
MANIFESTO	3.402	0,79
PS-GB	1.166	0,27
Total	428.937	100.00

Source: www.guine-bissau.com

gations into the diversion of funds during the period the PRS was in power.

The elected government led by Carlos Gomes Júnior comprises highly placed members of the PAIGC who have been selected for their advanced technical skills. Soares Sambu, an engineer, who is a member of the political bureau and was the director of the party's campaign in the legislative elections, occupies the Ministry of Foreign Affairs, International Cooperation and Communities. Daniel Gomes, the PAIGC's spokesman, who was notable in Kumba Ialá's regime for his harsh and critical questions, has entered a government post for the first time as Minister of Defence. Lássana Seidi, a lawyer and former president of the Superior Inspection against Corruption, now takes on the role of Minister of the Interior. Two well-known Guinean economists, João Aladje Fadiah and Issufo Sanhá, have been allocated the Ministry of Economy and Finance and the Ministry of Commerce, Industry and Tourism respectively. These examples demonstrate the technical expertise and skills represented by ministers in the new government, such proficiency having been considered negligible or a handicap during Kumba Ialá's regime.

The PAIGC's return to power after five years could not only be a result of general discontent with the catastrophic economic situation brought about by Kumba Ialá's government, but also represent a vote for national unity. Unlike the PRS, the PAIGC has revealed itself to be capable of rising above ethnic affiliations.

Conclusion

Any Guinea-Bissau government will face numerous pitfalls in attempting to build a stable and efficient administration. The persistent violation of human and civil rights under the Kumba Ialá regime demonstrated that the mere holding of multiparty elections is insufficient to overcome an institutional culture that has long followed undemocratic practices, and decades of authoritarian governance. The new government will be required to show the political determination to introduce profound reforms at the level of governance.

The institutional capacity of the country is weak at present, even when compared with other countries in sub-Saharan Africa, for several reasons. First, the public sector experienced considerable expansion and centralisation after independence, yet few incentives and little training were offered to the civil servants.[19] Their salaries were frequently not paid, a situation that has become endemic. Second, the functioning of the legal system is severely hampered by a shortage of resources. At present it cannot provide either adequate legal assistance to those accused or ensure complete impartiality when cases come to trial. Third, the role of the police service as a purely repressive agent rather than an impartial body acting to protect the community's interests and rights is still encouraged by the legal framework that guides the structures and actions of the police. Fourth, the weakness of the judiciary and legislative authorities that has followed the abuse of their functions by the executive powers is evident. Fifth, the salary structure that is currently applicable cannot provide adequate remuneration to magistrates, lawyers, members of the police and correctional services employees. This has created an environment conducive to corruption, which in turn undermines the credibility of the legal system.

Within this framework, if Guinea-Bissau is to make a convincing transition to democracy, the government must undertake far-reaching political reforms. It should also promote the generation of skills at all levels; strengthen the independence and the powers of the country's democratic institutions (such as parliament and the courts), invest in the training of public administration officials, support the impartiality of the media, and restructure the police service (in terms of recruitment, training and practices of accountability and social responsibility). In short, the administration needs to guarantee the normal functioning of governmental institutions. To this end, it is necessary not only to have a strong internal political will, but also to elicit considerable commitment from the donors. Until now all

cooperation programmes between donors and government that have been directed towards issues of governance have been interrupted by the volatile political situation, or undermined by a lack of coordination among donors. However, even when their efforts have been unsuccessful or divided, the donors have been motivated by a common aim – to assist in finding alternative solutions to the lack of institutional capacity in Guinea-Bissau without weakening the state itself.

As regards the armed forces, the army must be restructured and its duties redefined. At present it is disproportionately large, and dependent on the state for resources. The government needs to initiate a process of demobilisation, reintegration and social reinsertion for former combatants. This is essential if the country's internal stability and security are to be maintained. Although a restructuring process for the army was agreed in principle during Kumba Ialá's regime of, its implementation was delayed by various factors. These included border security problems; an escalation in the tensions between the military (as a result of the detention of several officials allegedly involved in the events of November 2000); delays in the payment of salaries; and division within the armed forces along ethnic, religious and political lines. The critical shortage of financial resources to provide the armed forces with training that would enable them to transform into a professional republican force has also been identified as a reason for the delay in the reform process.

The incidents of 6 October 2004 corroborate the need for restructuring of the armed forces. There is currently a disagreement over the amnesty granted in the recent Memorandum of Understanding signed by the government and the mutineers. For instance, the PRS called for an immediate pardon for the soldiers involved, but strongly rejected an amnesty that went back as far as 1980, mainly because it included Nino Vieira's regime, during which several Balante military officers were executed after an unsuccessful coup attempt in October 1986. On the other hand, an amnesty dated only from 1998 to the present would absolve other actors in the internal crises that led to the death of Ansumane Mané (the former leader of the military junta) in 2000, during Kumba Ialá's presidency.

In essence, there is consensus in Guinean political circles and civil society that the consolidation of democracy requires a reduction in the number of soldiers and a re-definition of the military's role. Only by these means can the army become an agent of democracy and not of oppression or destabilisation, as in the past. However, there is no agreement on the contents of this restructuring process. The various political and social actors have different opinions about what should be done. Also, unless reconciliation is achieved between the different factions in the military, any reform process will be regarded as a political instrument for excluding some military groups and favouring others, ultimately leading to renewed instability.

Guinea-Bissau is an example of an African state that is dysfunctional and weak. The roots of the political and social crises that have characterised the country's recent history can be found in a number of structural conditions. These are poor and inefficient governance; a small but fractured political elite; a highly divided and interventionist military; public institutions that are incapable of providing basic social services; widespread bureaucratic corruption; high poverty levels; and dependence on foreign aid. It is clearly a politically fragile state in which wealth is unevenly distributed and where the country's other resources are shared via a network of clientelism within the political group in power. These mutually reinforcing evils have created an explosive environment in which almost any grievance can trigger an eruption of violence, as recent events clearly illustrate.

In the last few years, there has been an increased polarisation of Guinean society, both in terms of the military and political elite (between and within parties) and in ethnic terms, between the Balante and non-Balante. Therefore it is of the utmost importance that the government should act. Its short-term responsibility is to respond to immediate needs (such as meeting the public expenditure

budget and managing the day-to-day business of government). But its most important duty is to devise measures that can address the structural aspects of the country's crisis, which are essential if long-term stability is to be assured.

The disruptive aspects of Guinean society represent major dangers that threaten the consolidation of peace and democracy. They include the need for comprehensive economic development; reconciliation at social and political levels; the management of internal sources of tension such as the ethnic issue; and the creation of an endogenous democratic culture that goes beyond the holding of elections. One of the most urgent tasks for the government that is essential to democratic stability is the restructuring of the armed forces. This will involve the social reintegration of surplus soldiers; the training of the new army according to the principles of democracy and the rights and duties of citizenship; the creation of incentives to persuade suitable candidates of the advantages of a military career; and a balanced recruitment policy that acknowledges the need for social and ethnic representivity.

Another pressing responsibility is to reinforce the country's democratic institutions, such as parliament and courts. The international community can play an important supportive role if it can overcome its programming and coordination problems.

Finally, the government should promote new ways of opening dialogues between the various Guinean social and political actors, using constructive and inclusive approaches (such as involving them in common projects) so that the conflict prevention capacities of Guinean society can be strengthened. The introduction of a national reconciliation process, which would create a space within which Guineans could acknowledge the errors of the past and exorcise the trauma of these events through transitional justice approaches, could be helpful. It could assist in building a sense of moral justice, and in allowing the country to break with the culture of impunity that has reigned unchecked in Guinea-Bissau in recent decades.

Notes

1 João Bernardo Vieira of the PAIGC legitimised his power by winning 52% of the votes in the second round of the presidential elections, as against the 48% obtained by Kumba Ialá of the *Partido da Renovação Social* (PRS). The PAIGC won 62 of the 100 seats in the National Assembly.

2 It is estimated that 90% of the armed forces joined the rebels in 1998.

3 The first ceasefire was signed on 26 August 1998, but renewed fighting broke out in October. The peace accord signed in November 1998 also failed to prevent violent incidents between January and February 1999. For a detailed analysis of the conflict, see Amnesty International, Guinea-Bissau: human rights in war and peace, July 1999.

4 The CPLP was formed in 1996. Its members are Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, São Tomé and Príncipe, and East Timor.

5 In the legislative elections held on 28 November 1999, the PRS won 38 seats in parliament, followed by the *RGB-Movimento Bafatá* and the PAIGC, with 28 and 24 seats respectively. In the presidential elections, Kumba Ialá contested the second round on 16 January 2000, winning 72% of the vote.

6 From January 2000 to September 2003, Kumba Ialá dismissed five prime ministers and replaced more than fifty ministers and secretaries of state.

7 Amnesty International, Guiné-Bissau: attack on the independence of the judiciary, November 2001.

8 Ibid.

9 *Coup d'état* in a country that had nothing to lose, *Público*, 15 September 2003.

10 Speech made by Kofi Annan in the United Nations on 18 December 2003, presenting a report on the situation in Guinea-Bissau.

11 The ECOSOC Ad Hoc Advisory Group was formed in 2002. It comprises permanent representatives from Brazil, Guinea-Bissau, the Netherlands and Portugal, under the chairpersonship of ECOSOC (representative of Guatemala), the Chairman do Group of Friends of Guinea-Bissau (representative of the Gambia), and the Chairman of the Ad Hoc Working Group of the Security Council on Conflict Prevention and Resolution in Africa (representative of Angola). Its objective is to analyse the humanitarian and economic needs of Guinea-Bissau, review its support programmes, and issue recommendations for a more effective, coherent and co-ordinated international aid effort.

12 The passage of Artur Sanhá through the ministries of Internal Administration and Fishing is seen as an example of the bad governance practised by Kumba Ialá's team. Moreover, many of the protests were based on the fact that Sanhá had been accused of homicide in a case yet to be

explained (that had never come to court?). *Público*, 29 September 2003.

13 This amount was collected from contributions made by the Netherlands, Sweden and France. The salaries for the previous months were paid in part by the European Union, after intense negotiations and pressures had been exerted by the Portuguese and Guinean governments, and also in part by contributions from the West African Economic and Monetary Union.

14 It is still strange that the rebels attacked from the magazine; it is rumoured that the army allowed them entry into the barracks.

15 The elections were monitored by almost 100 foreign observers, some of them representing a wide range of organisations - the Community of Portuguese-Speaking Countries (CPLP), the Economic Community of West African States (ECOWAS), *La Francophonie*, the African Union, UEMOA. Countries that sent observers were Portugal, the United States, the Gambia, Russia, Brazil and Mauritania. Four international observers were also invited individually.

16 Kumba Ialá was under house arrest, but he was freed on 8 March. He immediately announced his intention to return to active politics, stating to RDP-Africa that 'now it would be the atom bomb'.Even under house arrest, the voice of the ex-president was to be heard accusing General Veríssimo Seabra of having diverted US$6 million in donations from partner countries. In October 2003, pamphlets with similar accusations against the members of the Military Committee were circulated in Bissau, limiting the visits to Kumba Ialá. No current Guinean government structure has assumed responsibility for releasing Ialá from house arrest, which the National Transitional Council considered 'a mistake'. The proclaimed return of Ialá to politics is illegal according to the text of the Charter of Political Transition, which prevents him from running in any election until 2008.

17 The PUSD demanded four provincial governors, one of whom would be governor of Bissau. It was also interested in the first vice-presidency, in the post of Minister for Foreign Affairs (to be occupied by Francisco Fadul) and in other posts in several state bodies (such as the National Elections Commission, the National Media Council and the General Inspection against Corruption).

18 Besides the PRS, the *União Eleitoral*, which elected two deputies, signed a parliamentary agreement with the ruling party.

19 In the West African sub-region, Guinea-Bissau is one of the least populous countries, with 1,5 million inhabitants. It also has the highest number of civil servants, at a ratio of 20 for every 100 inhabitants. In neighbouring Senegal (with a population of 14 million), the civil service represents only 7%.

AFRICA WATCH

SOMALIA:
Plus ça change...?

RICHARD CORNWELL

As the year 2005 began, the collapsed state of Somalia at last showed faint signs of recovery, fourteen years after slipping into its deep coma and after thirteen failed attempts at revival. Not surprisingly, this development drew considerable media attention, prompted too by the evident relief of those who had toiled so hard to achieve this breakthrough.

The question now is when the resurrected government of Somalia can reduce its dependence on its external life-support systems and assume a measure of responsibility for what happens in Somalia itself. It is evident that these are early days, and that even partial recovery will have to be followed by a prolonged and carefully monitored convalescence. Therefore, the willingness of the international community to expend the necessary care and attention on this frail patient is also at issue.

There are also clear signs that the deeper malaise of the Somali body politic remains deeply rooted, in that the country's new parliament has already ignored important provisions of the charter under which it was constituted, and that it has also clashed with the president it elected, ostensibly over procedural matters.

For those with any familiarity with Somali history, this was perhaps to be expected, in that only under the dictatorship of Siad Barre had the independent state been strong enough to manage the turmoil of Somalia's clan-based factionalism, and then at such human and material cost that none would wish to use this as a template for the future. In any event, Barre's appalling regime was maintained by the largesse which Cold War donors lavished so cynically on Somalia, and any new government will have to learn to survive on much leaner rations.

Whether these truths have yet fully dawned on the Somali leaders who concluded their protracted deliberations in the relative comfort of Eldoret and Mbagathi will become apparent only when they have to return home to confront the physical hardships of their own war ravaged cities and towns. A glance at even the most recent diplomatic history of the Somali peace talks would suggest that the country's aspirant rulers have a steep learning curve to master if they are to fulfil the promises they have made.

Let us now turn to review the salient points of the last year, in the belief that this may temper our expectations and suggest the shape of some of the problems that may lie ahead.

By the beginning of 2004 protracted attempts to reconstitute some kind of state authority in a united Somalia appeared to have foundered on the implacable self-interest of the myriad factions represented at the peace talks in Kenya and the individual agendas of their regional backers. By this time the negoti-

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ations, sponsored by the Intergovernmental Authority on Development (IGAD), had seen the principal Somali participants divide into two competing and unstable alliances. The first of these centred around the Transitional National Government (TNG), established following Djibouti's initiative at the Arta conference in 2000, which had seen the formation under the presidency of Abdiqassim Salad Hassan of a Transitional National Government (TNG). Ethiopia, one of the three IGAD states charged with directing the peace process (the others being Kenya and Djibouti) had spurned what it depicted as a puppet of Djibouti and its Arab League allies, and in March 2001 had cobbled together a rival alliance of factions with the optimistic title of the Somali Reconciliation and Reconstruction Council (SRRC), which dedicated itself to undermining the TNG.

The subsequent failure of the TNG to extend its authority much beyond a handful of city blocks in the capital Mogadishu and its reliance upon *shari'a* courts to maintain a modicum of law and order in its bailiwick had provided its opponents, regionally and abroad, with plenty of ammunition. Nevertheless, so desperate were many in the international community to find something in Somalia that could be passed off as a positive conclusion to a series of attempts to recreate central government following the collapse of the state in 1991, that the TNG was often accorded far more prestige in the negotiations than its accomplishments warranted.

By 2003, however, the Ethiopian gambit was beginning to pay off. The SRRC was built up around a number of warlords and other faction leaders who had managed to establish a degree of control over areas of the old Somalia. Principal among these men was Abdullahi Yusuf Ahmed, who had been elected as president of the autonomous Somali state of Puntland upon its formation in 1998, a post he retained by force of arms after electoral defeat in 2001. Ethiopia had backed its diplomatic efforts by supplying aid and arms to its Somali allies and occasionally deploying forces across the border to curb the activities of Islamicists, whom it accused of supporting Oromo and Ogadeni dissidents within its own territory. This campaign, which sought to associate the TNG with a radical Islamic programme in Somalia also succeeded in winning the support of important Western countries.

Ethiopia hoped to find other building blocks for its imagined federal Somali state in the Hiraan and Bay regions, and in Somaliland, which had declared its independence in 1991, and continued to refuse all attempts to involve it in the reconstitution of the Somali Union formed in 1960. Despite its subsequent formation of a government and administration, Somaliland has so far failed to gain international diplomatic recognition, though its accomplishments have been widely acknowledged. The tacit and sometimes explicit inclusion of Somaliland in the notional reconstructed Somali state remains a major problem for international and regional actors, since any attempt at annexing it to a new Somali Union would precipitate violent resistance.

However grandiose Ethiopia's schemes may have seemed at first, by September 2003 it had manouvred its clients into a position of ascendency in the negotiations in the Nairobi suburb of Mbagathi. A Transitional Federal Charter was adopted and the SRRC seemed to have emerged the winner, causing Djibouti to withdraw from the talks. But by the end of 2003, tactical clumsiness and the warlords' eager pursuit of the individual spoils of office had given Abdiqassim's rump TNG a new lease of political life. Ethiopia now withheld its support, and only the SRRC's withdrawal from the negotiations and the threat of restarting another peace process inside Somalia forced a rapid reconsideration on the part of the IGAD partners.

Within a few months, the international donors, who had financed this exercise, exasperated by the inability or unwillingness of the conference delegates to adhere to agreements they had debated and even signed, were wondering what return they could expect on the investment they had made on the talks. Their impatience was becoming almost tangible, and this, together with the Kenyan government's desire to bring down the curtain on

the diplomatic circus, seems to have moved the IGAD states to adopt a degree of common cause to find some resolution, however tenuous this might prove.

The full re-engagement of Ethiopia in the IGAD process and the broadening of the direction of the conference effectively broke the deadlock, initiating a period in which the SRRC and the TNG eventually agreed to an ambiguous and loosely redrawn Transitional Federal Charter, which would pave the way for the election of a new Transitional Federal Parliament (TFP), which in turn would elect a President, to serve for a period of five years.

Further delays followed as the process of selecting members of the transitional federal parliament (TFP) was disputed among the conference delegates. Eventually compromises were reached and by the end of August 2004, most of the 275 MPs had been sworn in, still in Nairobi.

The constituent members of the SRRC now recognised that the advantage lay firmly in their hands and there were few observers who were surprised, therefore, when on 10 October 2004 Abdullahi Yusuf emerged as the new transitional president, following an election by the TFP in which Ethiopian influence was apparent.

Ethiopia, Kenya and Uganda immediately pledged their support to the nascent administration and urged its prompt return to Somalia to begin its work of reconstituting the state. The governments of Djibouti and Egypt were less enthusiastic, and Somaliland was profoundly disturbed by the election of a man whose Puntland administration had long expressed belligerent claims to parts of the regions of Sool and Sanaag. Fresh outbreaks of fighting between Puntland and Somaliland forces around Las Anod emphasised the importance for the international community to make assistance and recognition for the new Somali government conditional upon the exercise of restraint in its relations with the established, and functioning, authorities in Hargeisa.

As it is, Abdullahi Yusuf's government has so daunting a task ahead of it that few would give it much chance of achieving its ambitious goal of restoring law and order to the south and centre of the country. Indeed, the first task it faces is to begin returning the instruments of government to the national territory itself. This is an uncertain enterprise, not least because of Abdullahi Yusuf's perceived dependence upon Ethiopia and his role in accelerating the demise of the Mogadishu based TNG. His choice of a Mogadishu civil society activist, Ali Mohammed Geedi, as his prime minister was calculated to mollify some of the feelings in the capital against the new administration.. The inclusion of a number of Mogadishu warlords in the new cabinet also aimed to achieve the same effect. But the principal positions in the 91-member cabinet have gone to warlords and others closely associated either with the President or the SRRC.

At present then, the government of Somalia coalesces around a group of faction leaders and warlords whose control over the national territory is constantly under threat from inter and intra-clan fighting. The transitional charter requires that the armed Somali factions now hand over their weapons to the new administration. It also demands the surrender to the authorities of control over the ports and airports that constitute the principal source of their revenues. Yet all the faction leaders realise that their individual position in the government is effectively based on their retention of independent sources of patronage and power. Until such time as Abdullahi Yusuf's administration can demonstrate convincingly that it is going to be effective, there will be little to convince its members to comply individually with the charter's requirements.

Lacking both money and the armed force to relocate itself in Somalia, let alone enforce its writ over the national territory the new government immediately made an appeal for massive international assistance. Abdullahi Yusuf, admitting that his administraion lacked means to tackle the problems of reconstruction and restoration of state authority, called on the international community to set aside $15 bn for the purpose. In addition he asked for a force of up to 20,000 troops to protect his government on its return to Somalia and to assist in the business of disarmament.

The broader international community responded with what was effectively an embarrassed silence. Only the African Union showed any inclination to make a favourable response, largely due to the insistence of the IGAD states, particularly Ethiopia, Kenya and Uganda. There was nothing the AU could do by way of providing financial help, but it undertook to consider providing a military force, initially to monitor the uncertain peace and subsequently to protect a Somali government that Kenya was only too eager to see leave Nairobi.

Where the funds and the soldiers for such an expeditionary force are to be found remains to be seen. It seems that the AU realises that without some sort of practical assistance the new government will remain stillborn, and that only if a start is made with the restoration of state authority will international donors reconsider their position.

Nonetheless, this is an enterprise fraught with danger. Islamicist leaders have warned that the deployment of any foreign forces on Somali soil will be regarded as a hostile act. It is possible that such an event could gain converts to the radical cause, which already feels itself threatened by Abdullahi Yusuf's accession to power under Ethiopian patronage.

For the moment the old SRRC alliance is held together by a patronage that has yet to make material returns to its members. How long will patience hold? How will the transition from private to public interest take?

OVERVIEW OF SECURITY SECTOR REFORM PROCESSES IN THE DRC

HENRI BOSHOFF

> Security sector reform is the transformation of the security system, which includes all the actors, their roles, responsibilities and actions, so that it is managed and operated in a manner that is more consistent with democratic norms and sound principles of good governance, and thus contributes to a well-functioning security framework.[1]

The Democratic Republic of the Congo's (DRC) transitional government, which has been in power since June 2003, continues to face significant challenges in implementing crucial aspects of the transition, most notably in the area of security. A key component of the transitional agenda, the terms of reference for security sector reform (SSR), are outlined in the resolutions and provisions of the Global and All-inclusive Accord signed in Pretoria on 17 December 2002 (Annex V, Article 2a).

Peace-building in the DRC has been dominated by security and legal/constitutional concerns. This process is a pre-condition for ensuring the security of people, property and institutions in order to deliver other peace dividends (reconstruction and development aid, job creation, economic rehabilitation, and foreign investment). However, in the last quarter of 2004 developments in the eastern provinces of the DRC (North and South Kivu) and the Ituri District, where sporadic outbreaks of fighting continued despite the presence of a strengthened UN peacekeeping force, are evidence of the scale of security challenges facing the transitional government. Moreover, the recent threat of a return of Rwandan forces to the east of the DRC has not helped improve stability in the area.

The establishment of an integrated and operational defence force for the DRC from disparate belligerent groups is critical because, aside from MONUC (Mission de l'Organisation des Nations Unies en République Démocratique du Congo) forces, these units will constitute the only 'legitimate' deterrent to process spoilers. The lack of reliable and verifiable information on the actual numbers or armament of former belligerent forces is of serious concern, and the size of the future defence force has yet to be determined. Meanwhile, the absence of a reliable salary payment system within the existing defence force has created a security hazard of its own when unpaid soldiers prey on the local population for survival. This has contributed negatively to the stability of volatile provinces such as the Kivus, the Kasais and Katanga, where military integration has essentially meant the juxtaposition of the units of the former belligerents under (sometimes merely theoretical) integrated command.

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Security sector reform: the FARDC

In addition to the creation of a unified Congolese defence force (the Forces Armées de la RDC, or FARDC) the Global and All-inclusive Agreement, part VI provides for the establishment of a superior defence council (SDC) chaired by the president and charged with guiding and providing advice on the setting up of a restructured and integrated army as well as on the disarmament of armed groups. The SDC is tasked with supervising the withdrawal of foreign troops; drafting a new defence policy for the DRC; and giving its assent to a declaration of a state of siege or a declaration of a state of war. Furthermore, as far as army integration is concerned, the Final Act, in Resolution No DIC/CD/04 of 2 April 2003, provides that a mechanism should be set in place for the formation of a restructured and integrated national army.

The following timetable for the formation of the FARDC (figure 1) was presented by Vice-President Azarias Ruberwa on 9 February at a meeting with the international representatives on behalf of the transitional government.

At the meeting the government was advised to undertake a series of decisions regarding measures directed at itself, the police, the military and the donor community. The most pressing of these priorities are summarised below:

At governmental level the importance of establishing national security was emphasised. This included an appeal to

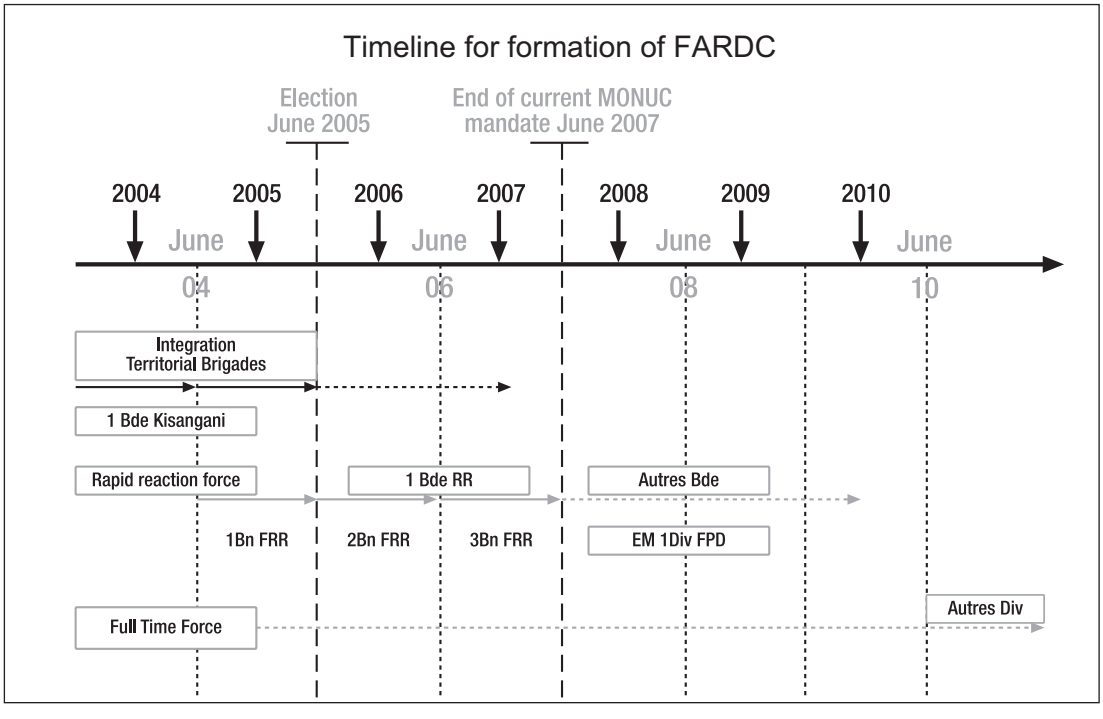
- develop a comprehensive national security sector policy in an integrated and transparent manner; and
- ensure budgetary provisions for the establishment and maintenance of security entities.

Priorities for the police were identified as the need to

- elaborate the future role of the police service by holding a national seminar on police issues, with assistance from MONUC;
- adopt a decree appointing the national police high command;
- adopt a decree establishing a close protection corps; and
- designate the command structure for the IPU.

It was recommended that the military

Figure 1: Timeline for the formation of FARDC



- expedite the review and adoption of the law on the general organisation of defence and the armed forces;
- establish the Supreme Defence Council (SDC) as envisaged in the All-inclusive and Global Agreement of 17 December 2002;
- adopt and implement a coherent, cost-effective and realistic military integration plan, complemented by a comprehensive national disarmament, demobilisation and reintegration (DDR) programme;
- produce coherent, timely, effective and sustainable plans for the deployment of integrated FARDC units, in close coordination with MONUC.

And finally donors were challenged to revise their priorities in the region. To this end the following recommendations were made:

- The EU should facilitate the early completion of the training of the Integrated Police Unit (IPU).
- An advisory group on SSR in the DRC should be set up, possibly attached to an SSR cell in MONUC, to assist the transitional government to plan and implement its reform policies.
- Sufficient funds should be made available for immediate disarmament requirements in places such as Ituri and other locations in the east, pending the implementation of a national DDR programme.
- A donor coordination mechanism should be established under the joint chairmanship of the transitional government and MONUC to review SSR progress every six months.

The draft Defence Law that establishes the FARDC was only recently promulgated (on 12 November 2004) and fails to provide any clarity on the size, operations or functioning of the future integrated army, focusing instead on the organisation and structure of the defence apparatus and clarification of the responsibilities attached to the various sections and posts.

According to the Defence Law, the head of state holds the function of supreme commander of the FARDC. In exercising this function, however, he must consult with the Superior Defence Council (SDC), the government, the National Assembly and the Senate before taking significant decisions such as declaring war or a state of emergency.

In line with the provisions of the transitional constitution, the SDC is composed of the following members: the president; the four vice-presidents; the minister of defence; the minister of the interior, decentralisation and security; the minister of foreign affairs; the chief of staff of the FARDC; and the chiefs of staff of the army, air force and navy. The SDC is to hold at least one meeting a month. At the time of writing the SDC had yet to meet for a session.

Towards a national DDR plan

It is important to note that currently there are three ongoing DDR processes in the DRC. The first involves the national DDR process, as part of SSR, to demobilise, disarm and reintegrate the signatories to the Global and All-inclusive Agreement and the Final Act of 2 April 2003. The following figures indicate the estimated numbers of soldiers involved: FAC: 100 000; The Congolese Rally doe Democracy-Goma (RCD–G): 45 000; The Congolese Rally for Democracy-National (RCD–N): 10 000; Rally for Congolese Democracy–Kisangani/Liberation Movement (RCD–K/ML), 15 000; MLC: 30 000; Mayi Mayi: 30 000 to 50 000; and Ituri armed groups: 30 000.

The second process is concerned with the disarmament, demobilisation, repatriation, resettlement and reintegration (DDRRR) of so-called negative forces in the Kivus, such as the former *Forces Armées Rwandaises* (FAR), Interhamwe and *Forces Démocratiques de la Libération du Rwanda* (FDLR). This entails a voluntary repatriation of these forces - estimated at 8 000 to 10 000 combatants - by MONUC and the DRC government. The third and final process involves the demobilisation and community reinsertion (DCR) programme to demobilise and disarm the Ituri armed groups – a programme that was launched in September 2004.

We will focus on the first of these processes, the national DDR process intended to demobilise, disarm and reintegrate the signa-

tories to the Global and All-inclusive Agreement. According to the second draft of the national DDR plan, dated 5 March 2004, at present there are up to 330 000 combatants in the DRC, of whom 200 000 need to be demobilised. The plan aims to limit the future combined DRC defence force (FARDC) to no more than 130 000 people – following the recommendations of a workshop held in Kinshasa between the FARDC and representatives of Belgium in December 2003, to the effect that the FARDC should have a combined force level of between 100 000 and 125 000 soldiers. Such a force would comprise a territorial force of 19 light brigades, a rapid reaction force of two to three brigades, and a main defence force of three divisions.

Several donors have pointed to an apparent lack of political will within the transitional government to fully participate and engage in the finalisation and implementation of the national DDR programme. It appears that the various components are more interested in maintaining their individual capacities, certainly until after the general election, than in committing to the DDR process.

According to the national DDR programme, the plan consists of two clearly differentiated tracks: one for candidates for integration into the FARDC, and the other for candidates for demobilisation and socio-economic reintegration. Because these tracks ('integration' and 'demobilisation') share a number of activities, this approach has been termed *'tronc commun'*. First, there are information and sensitisation activities. It is important to note that these activities include civilian populations affected by conflict, as well as international and national implementing partners. Second, the plan involves regrouping combatants in the vicinity of orientation centres, to be followed by the disarmament, release, registration, safekeeping or destruction of combatants' weapons and the transfer of disarmed combatants to orientation centres for identification. At this stage the individual will be regarded as a potential candidate either for a placement in the FARDC or for reintegration into society as a demobilised combatant.

Questions relating to funding for the military reform process have been of major concern for the transitional government. This is hardly surprising, since the cost of creating a new, integrated Congolese army is estimated at more than US$546 million. Although funding made available by the Multi-Donor Demobilisation and Reintegration Programme (MDRP)/ World Bank partnership is meant for specific aspects of the DDR process, there is consensus over the need for a joint integration–DDR approach. In fact, the donor community has already pledged two million dollars to this process. And, while MDRP/World Bank money cannot be used to finance military activity, they have agreed to unblock US$5,9 million, to be administered by the United Nations Development Programme (UNDP) for the operation and functioning of *Commission Nationale pour la Démobilisation et al Réindsertion*(CONADER).

The South African proposal and the 'emergency plan'

Following the Cooperation Accord on Defence signed between South Africa and the DRC government on 17 June 2004, the South African government presented its own proposal to support the integration of the FARDC.

According to the South African plan (based on its own transition experience), all armed units would be regrouped under the instructions of the chief of general staff. Activities in the regrouping centres would include identification, leading to the separation of eligible and ineligible elements, and initial selection and orientation. According to a plan drawn up by the *Structure Militaire d'Intégration* (SMI), combatants would then be moved to *centres de brassage* (CBR), where intermixing and retraining would take place. This would be followed by final selection and placement of the new units. Deployment movements would be ordered by the chief of the general staff and training at unit level would then commence. The South African plan proposed that the process begin on 2 August 2004.

Careful scrutiny of the two plans reveals

that they are largely similar. In view of the delays described above, this 'emergency plan' is a short-term measure to facilitate the integration of six brigades prior to the elections. It is seen as a solution to the transitional government's immediate need to stabilise the east of the DRC. Training personnel from Belgium and South Africa will be deployed in the DRC between 9 and 28 February 2005. In addition, some of the Congolese officers trained in Belgium in 2004 will be part of the emergency plan. It should be noted, however, that the emergency plan is not intended to affect the national DDR and integration plan, which will continue as envisaged.

SSR: the Police Force

Memorandum II on the Army and the Security Forces, signed on 29 June 2003 by the signatories to the Global and All-inclusive Agreement, makes provision for two policing units responsible for security during the transition period. The first is the Close Protection Corps (CPR), responsible for the security of political leaders. The second unit refers to an integrated police unit (IPU), responsible for the general security environment.

The reform and restructuring of the Congolese National Police (PNC) forms an integral part of SSR efforts in the DRC, being a priority for the transitional government. Vice-President Ruberwa has indicated the following numbers of personnel as the initial estimates required to start rebuilding the police force:

City	Number of police
Kinshasa	50 000
Goma	11 491
Gbadolite	8 000
Beni	2 640
Isiro	1 500
Lulingu	1 000
Total	74 631

The PNC will probably be limited to between 70 000 and 80 000 personnel, while MONUC will take the lead on the more technical integration aspects – a task requiring additional support from the international community. The UN Secretary-General has already requested an increase of 396 CIVPOL officers to reach an authorised strength of 507. MONUC has continued to train, monitor and provide technical advice to local police in Bunia and, at the request of the transitional government, has trained an integrated police unit of 350 officers for Bunia in Kisangani.

The Global and All-inclusive Accord established that an UPI would have the responsibility of assuring the security of the transitional government and the population, while Memorandum II on the Army and Security Forces, signed in Kinshasa on 29 June 2003, clearly defined the IPU and CPR. Accordingly, the CPR was tasked with responsibility for

- personal protection of those officials in the transitional government who have been identified as requiring it; and
- ongoing protection of residences, offices and other buildings and sites for transitional institutions.

This was strengthened by a ministerial decision in late December 2003 (No 076/2003) allowing for the operationalisation of the CPR. The IPU was given the following mandate:

- Secure international entry points to Kinshasa, that is, airports and marine ports.
- Secure the main roads to and from Kinshasa.
- Back up the protection provided by the CPR when necessary.
- Supervise the performance of the military police.
- Replace the MONUC neutral force, a phased deployment based on progress with the formation of the IPU.

Conclusion

The challenges and delays facing security sector reform in the DRC, in particular the formation of a unified Congolese national army and the necessary disarmament, demobilisation and reintegration (DDR) processes for the various armed groups are currently the

biggest threats to the transitional government. Renewed and intense fighting in Bukavu and Goma in recent months is evidence of the inability of the current regime to effectively guarantee security for its citizens.

The agreement between the DRC, Belgium and South Africa, as well as Angola, to help integrate six brigades before the election (the emergency plan) could help to stabilise the east of the DRC and support the police in safeguarding the elections in June 2005. An important consideration is whether various components of the transitional government will make their best soldiers available for emergency integration. The example of the RCD–G, who refused to release soldiers for deployment to the Kitona *centre de brassage* for training by the Angolans, is cause for concern.

In addition, we are left with several unanswered questions regarding the FARDC. Beyond the emergency plan, what is the strategy for reintegrating and retraining the entire defence force? How is the FARDC to be structured and what will its ultimate force level be? How will the transitional government resolve the issue of payment to FARDC members? What will be the size of the presidential guard? Without a commitment by all involved to finding answers to these questions the national DDR programme will not move forward. It is of the utmost importance that MONUC's SSR cell become operational and effective in coordinating these initiatives .

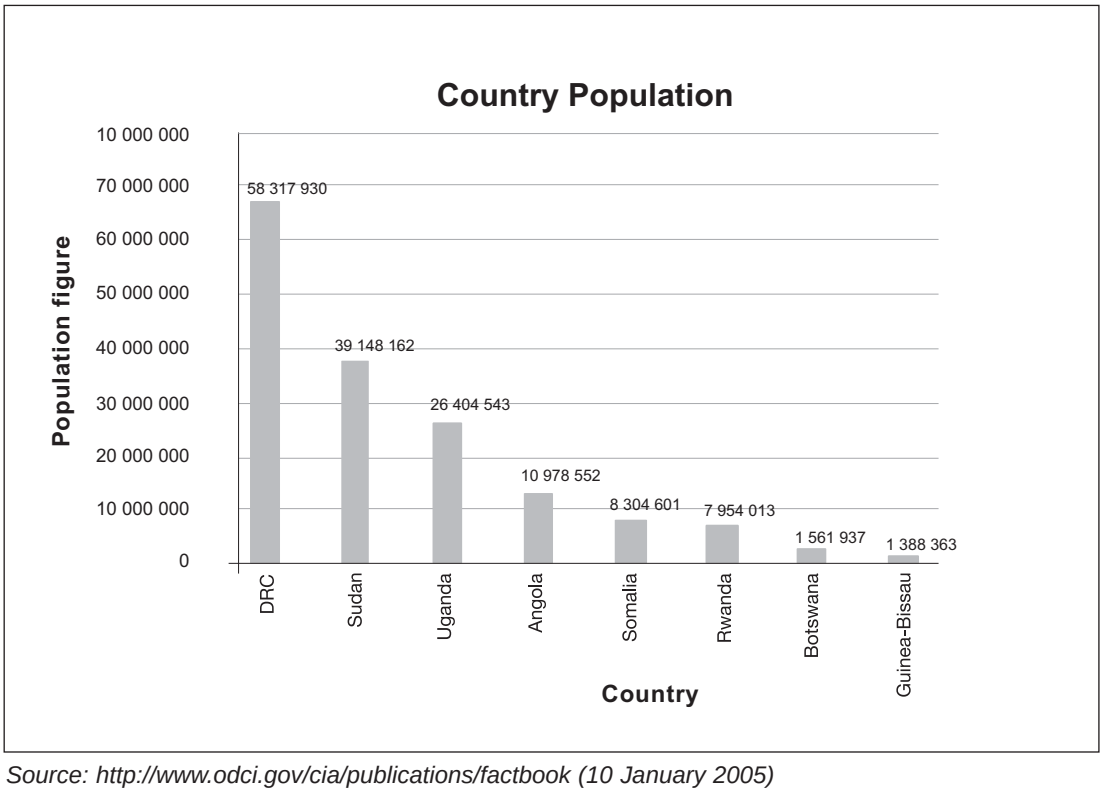
Notes

1 Definition provided by Herbert Wulf, based on DFID et al, The global conflict prevention pool: a joint UK government approach to reducing conflict, 2003; and OECD/DAC, Security issues and development cooperation: a conceptual framework for enhancing policy coherence, 2001. H Wulf, Security sector reform in developing and transitional countries, in C McCartney, M Fischer and O Wills (eds), Security sector reform: potentials and challenges for conflict transformation, Berghof Handbook Dialogue Series, No 2, 2004.

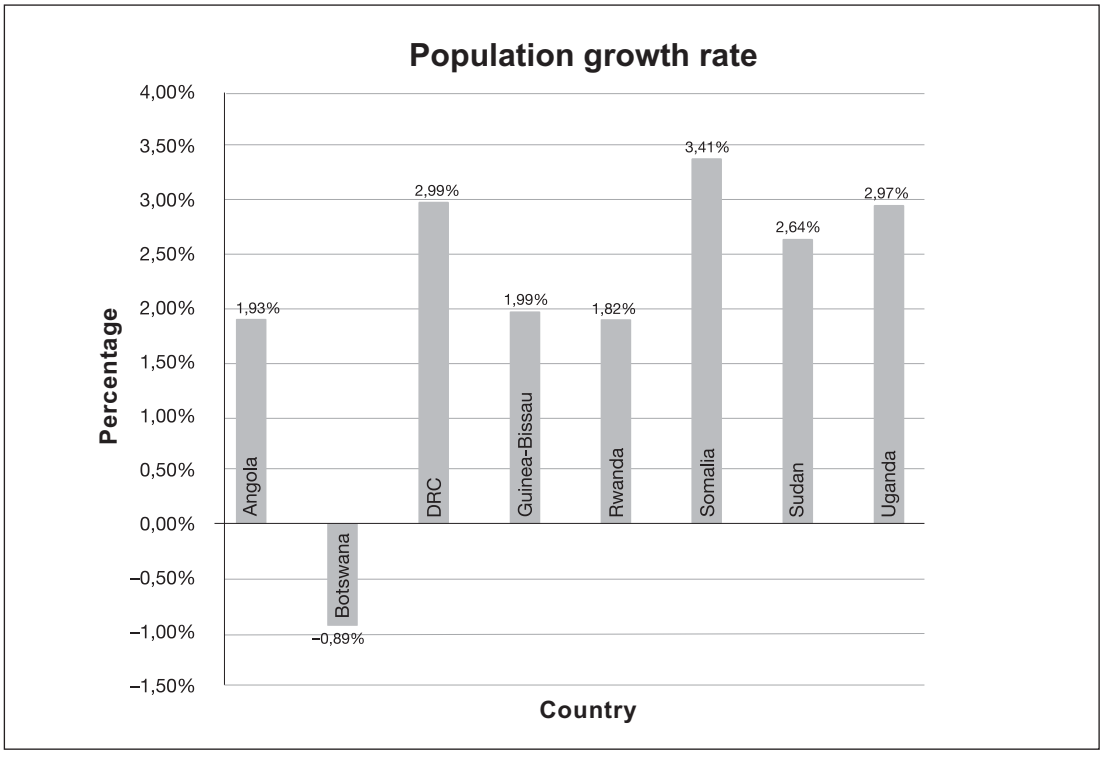
AFRICA WATCH

TRENDS AND MARKERS

Recent data, statistics and indicators



Source: http://www.odci.gov/cia/publications/factbook (10 January 2005)



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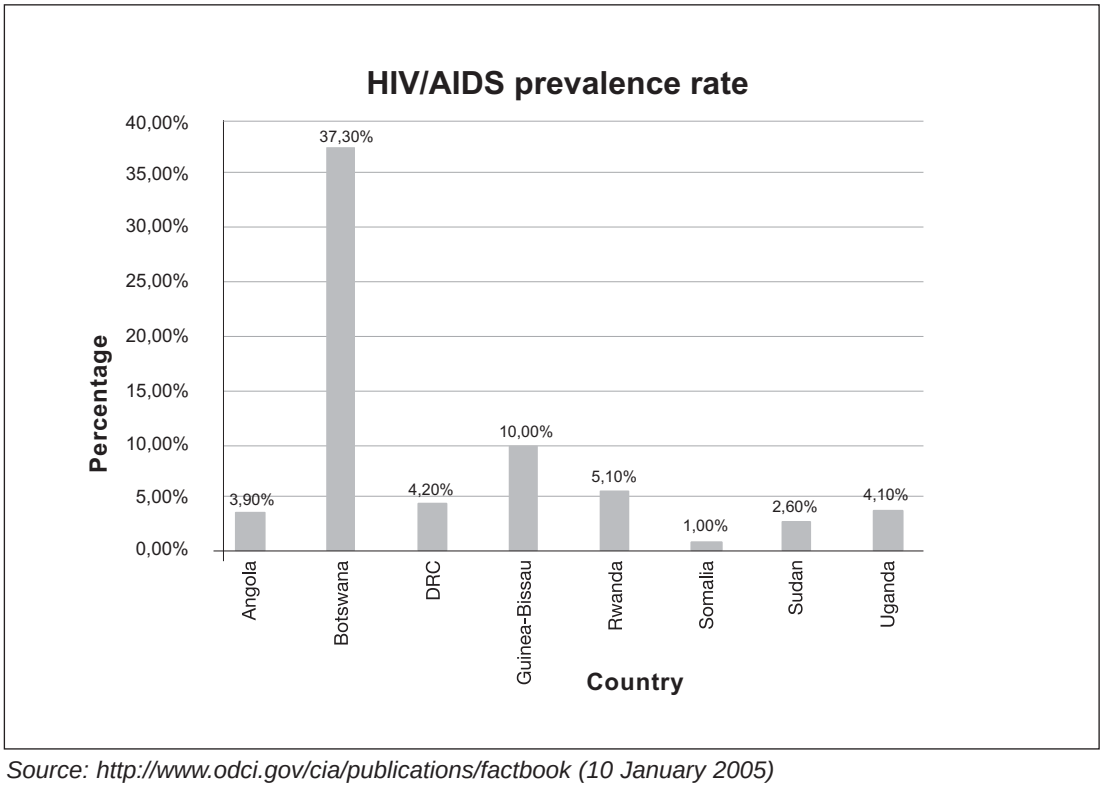

Source: http://www.odci.gov/cia/publications/factbook (10 January 2005)

Life expectancy at birth

Country	Total population	Male	Female
*Angola	36.79	36.06	37.55
*Botswana	30.76	30.99	30.53
*DRC	49.14	47.06	51.28
*Guinea-Bissau	46.98	45.09	48.92
*Rwanda	39.18	38.43	39.96
*Somalia	47.71	46.02	49.46
*Sudan	58.13	56.96	59.36
*Uganda	45.28	43.76	46.83
* - 2004 estimates			

Source: http://www.odci.gov/cia/publications/factbook (10 January 2005)

Literacy rates (definition: age 15 & over can read & write)

Country	Total population	Male	Female
**Angola	42.0%	56.0%	28.0%
**Botswana	79.8%	76.9%	82.4%
**DRC	65.5%	76.2%	55.1%
**Guinea-Bissau	42.4%	58.1%	27.4%
**Rwanda	70.4%	76.3%	64.7%
*Somalia	37.8%	49.7%	25.8%
**Sudan	61.1%	71.8%	50.5%
**Uganda	69.9%	79.5%	60.4%
* - 2001 estimates; **- 2003 estimates			

Source: http://www.odci.gov/cia/publications/factbook (10 January 2005)

GDP Composition by sector

Country	Agriculture	Industry	Services
***Angola	8%	67%	25%
****Botswana	4%	48.7%	51.2%
**DRC	55%	11%	34%
*Guinea-Bissau	62%	12%	26%
****Rwanda	40.7%	21.5%	37.8%
**Somalia	65%	10%	25%
****Sudan	38.7%	20.3%	41%
****Uganda	36.1%	21.2%	42.8%
* - 1999 estimates; **- 2000 estimates; ***- 2001 estimates; ****- 2003 estimates			

Source: http://www.odci.gov/cia/publications/factbook (10 January 2005)

ESSAY

THE PAN-AFRICAN PARLIAMENT

A Plenary of Parliamentarians

JAKKIE CILLIERS & PRINCE MASHELE

Founded on the basis of the 1991 Treaty Establishing the African Economic Community that came into force in May 1994, the Pan-African Parliament (PAP) was inaugurated in Addis Ababa on 18 March 2004. The inauguration followed the ratification by a majority of the 53 African Union (AU) member states of the PAP Protocol that had come into force on 14 December 2003. While it is suggested that the PAP will oversee the AU Executive once the continental parliament has been given legislative power in its second term, the debate on the role that the PAP should play continues to rage. This article enters the debate by giving an overview of the workings of the PAP and makes some concrete proposals on ways in which the continental parliament can contribute to the continent. The article underlines the need for the PAP to develop or seek the capacity to conduct or commission research on pertinent issues for further recommendation to the assembly. It proposes that the continental parliament should send observer missions to countries holding elections on the continent so that it may contribute to the entrenchment of democracy on the continent.
The article also identifies some of the challenges that lie ahead of the continental body, including funding as well as the challenge of maximising the participation of ordinary Africans.

Introduction

It was obvious that government officials in Pretoria would welcome the decision of the July 2004 African Union Summit that the seat of the Pan-African Parliament would be in South Africa. Support for the South African bid amongst member states of the Union was widespread and the decision a virtual foregone conclusion. Yet decisions to host organs of the African Union are inevitably contentious and, until the members of the Southern African Development Community recently started acting in greater unison, something of a messy affair with unpredictable results given the complex nature of trade-offs between heads of state during AU Summit meetings. But the decision on the location of the PAP was inevitable following Egypt's eleventh hour withdrawal and the earlier withdrawal of Libya – an unlikely contender given the absence of a national legislature in that country.

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session of the Parliament at its interim location at Gallagher Estate in Midrand, Gauteng, there was hardly any public discussion in South Africa on PAP beyond speculation on the associated costs and the 'burden on the taxpayer'.[1] Yet, South Africa's decision to bid to host PAP was the result of sober reflection within government, if not in the public domain. Of the various organs of the African Union established by the Constitutive Act, PAP is clearly the largest and most prestigious, although some may argue that the Court of Justice is perhaps more important.[2] The only other AU structure under consideration without a permanent location is the Economic, Social, and Cultural Council (ECOSOCC) which will be "an advisory organ composed of different social and professional groups of the Member States of the Union"[3]. ECOSOCC is of a different stature to either the PAP or the Court. ECOSOCC will not be established by means of a legally binding Protocol but through the adoption of its statutes by AU Heads of State. It is not surprising, therefore, that Pretoria quickly stepped back from its enthusiasm to host ECOSOCC in favour of PAP.[4]The Protocol establishing PAP entered into force on 14 December 2003, thirty days after ratification by a majority of the 53 AU member states. The Parliament was inaugurated with great fanfare in Addis Ababa on 18 March 2004 where its inaugural session lasted three days. Two hundred and two legislators from 41 countries were sworn in at a ceremony presided over by the then-Chairperson of the Assembly of the African Union, President Joaquim Chissano of Mozambique. This glamorous affair was marked by great pomp and many speeches by the parliamentarians who swore their oath of office or took a solemn declaration in Arabic, English, French or Portuguese. Perhaps the most important event over the three days was the election of the president, Ms Mongella Gertrude Ibengwe from Tanzania who received 166 votes after the withdrawal of two other candidates from Ghana and the Sudan. In line with the informal understanding that a country that offers to host an organ of the Union should not also contend for the leadership position within that body, the then South African speaker of the national assembly, Frene Ginwala, had earlier withdrawn her bid for the position of president of the PAP. This despite the widespread acclamation for the role that she had played in preceding years in pushing to finalize the Protocol and thereafter in mobilizing support for early signature and ratification.[5]

Four vice-presidents, one from each of Africa's other regions, were also elected, by secret ballot, and sworn in. They are Prof F. Van Dunem Fernando José de França from Angola as 1st Vice President (South); Dr Mohammed Lutfi Farhat from Libya as 2nd Vice President (North); Ms Loun Ndoadoumnge from Chad as 3rd Vice-President (Central); Mr Jérôme Sacca Kina Guezere from Benin as 4th Vice-President (West).[6] Collectively the president and four vice-presidents constitute the bureau of PAP.

The Parliament then set up three ad hoc committees to prepare the basic texts for the operation of the Parliament, namely a legal affairs committee, a budget committee and a credentials committee, each consisting of three parliamentarians from each of Africa's five regions. After parliamentarians from 36 countries had taken the floor to deliberate various issue, the meeting concluded with announcements regarding the recruitment of parliamentary staff and the working of the ad hoc committees.

The Protocol provides that PAP meet at least twice a year in ordinary sessions and that each session lasts a maximum of one month. As a result, PAP had to convene a second meeting before the end of 2004. Extraordinary sessions are more difficult to authorize and may only be called by two thirds of "Parliamentarians, the Assembly [of AU heads of state] or the Council [of Ministers of Foreign Affairs]".[7]

Forty-six countries were represented during the PAP's second session (16th September to 1st October 2004) in Midrand that was enlivened by official visits such as that of the Indian President. More substantive than the first, the second session adopted six resolutions and an equal number of recommendations. Beyond expressing thanks to the Republic of South Africa for hosting the Parliament, members flexed their muscle, calling upon the

Government of the Sudan (but not the rebel movements) to fully cooperate with the African Union to put and end to the war in Darfur and to disarm the Janjaweed and other militants in the region."[8] Parliament also "[d]ecided that a fact-finding mission from PAP visit the region of Darfur to acquaint itself with the realities on the ground and to report to the PAP."[9] The subsequent mission by six MPs was concluded at the end of November 2004.

Other resolutions included a request to the Committee on Rules, Privileges and Discipline to come up with recommendations on how to maximise the role of the Parliament in respect of human rights, democracy, good governance, transparency, accountability, peace, security, stability, co-operation and development.[10] The Parliament also recommended that the Assembly provide it with a clear term limit of five years for its first term. Following a briefing by Prof. Wiseman Nkuhlu of the NEPAD secretariat, a substantive debate was held on the New Partnership for Africa's Development and the African Peer Review Mechanism. The Parliament urged Member States to accede to the APRM, requested regular reports on NEPAD and asked that "all peer review reports be tabled in the Pan-African Parliament for debate, observations and recommendations."[11]

Members of Parliament also recommended to the Assembly that the president of the Parliament be a member of the five person Panel of the Wise[12] and that reports of the Peace and Security Council on conflict resolution efforts of the AU be tabled in PAP for consideration, observations and recommendations.[13] Since these are all necessarily recommendations to the Assembly of the African Union that now meet twice a year in ordinary session (February and July), PAP will have to await the decisions of that body.

Collectively these resolutions reflect a determination by PAP to maximize those powers provided for in its first term and to play more than a ceremonial role. One can, therefore, expect that the 2005 sessions of the Parliament will be substantive in nature during which parliamentarians will start wrestling with the challenges facing Africa.

PAP as a Check on Executive Power

There are many views on how the African Union has begun its work. South African President Thabo Mbeki likens the recent development of the continental body and its various organs to a "revolution".[14] His remarks appear to be borne out by a reading of the various documents on the vision, mission and strategy approved at the July 2004 Summit. For example, the AU Guideline Document 'Africa, Our Common Destiny' states that: "…political integration should be the raison-d'être of the African Union, the objective being to achieve a federation or confederation in the long run."[15]However, Africa's modern history is replete with examples of failed and half-hearted integration schemes that have hardly gone beyond political summits. No wonder that the same document speaks, on the previous page, of the need to ensure that "…the [pan-African] integration process should be geared to stimulating or reenergizing the role of states." The question is: how to marry the political integration of states intent on strengthening their capacity to deliver, increasingly resentful of interference in their domestic matters, with the ambitions of an integrated Africa and a single legislature?

One view of the emerging continental architecture[16] is to classify the various institutions that constitute the African Union as part of a continental executive, potential legislature or judiciary. Article 5 of the AU Constitutive Act thus lists, amongst others, the various executive structures such as the Assembly of Heads of State, the Executive Council of Foreign Ministers, the Permanent Representative Committee of Ambassadors in Addis Ababa, the Commission and various ministerial committees.[17] PAP is obviously the embryonic legislature and the envisaged Courts of Justice/Human and Peoples' Rights the judiciary, with ECOSOCC serving as a link between these various institutions and ordinary African citizens.

Since ECOSOCC is not established in terms of a separate legal framework and because its function is limited to giving advice, perhaps the most appropriate, and admittedly generous view, to take of ECOSOCC would

be that it could serve to help bridge the chasm that divides many of Africa's leaders and the African people. Taking such a liberal view, one could include ECOSOCC within the broad ambit of the 'good governance' structures within the African Union.

PAP has its origins in the 1991 Treaty Establishing the African Economic Community that entered into force in May 1994.[18] Thereafter little progress was made towards the economic, social and cultural integration of Africa as set out in the Treaty until the Sirté Declaration of 1999. During that Extraordinary Summit of the OAU held in Libya on 9 September 1999, heads of state called for the establishment of an African Union in conformity with the ultimate objectives of the OAU Charter and the provisions of the AEC Treaty – a process culminating in the establishment of the African Union through its Constitutive Act. Hence the Act notes that: "The provisions of this Act shall take precedence over and supersede any inconsistency or contrary provisions of the Treaty establishing the African Economic Community."[19]

According to Article 2(3) of the PAP Protocol: "The ultimate aim of the Pan-African Parliament shall be to evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage. However, until such time that the Member States decide otherwise by an amendment to this Protocol:

- The Pan-African Parliament shall have consultative and advisory powers only; and
- The Members of the Pan-African Parliament shall be appointed..." (i.e. not elected).

Article 2 also states that the parliamentarians represent all the people of Africa and that the five MPs chosen from each country must "reflect the diversity of political opinions in each National Parliament or deliberative organ". The principle of political diversity to guide the appointment of the five parliamentarians from each AU Member State to the PAP is an important attempt to lever a minimum political diversity from the constraints of domestic politics. For this reason, the South African decision to exclude the official opposition, the Democratic Alliance, from its five MPs was regrettable – sending a negative message to a continent that had awarded the country the honour of hosting PAP on the basis of the quality of its constitution and the vibrancy of its democracy. Even the Zimbabwean delegation, a country where parliamentary democracy has suffered severe erosion in recent years, includes representatives from the official opposition, the Movement for Democratic Change.

Beyond its composition and modalities around its establishment, the objectives of PAP (listed in Article 3) are to:

1. facilitate the effective implementation of the policies and objectives of the OAU/AEC and, ultimately, of the African Union;
2. promote the principles of human rights and democracy in Africa;
3. encourage good governance, transparency and accountability in Member States;
4. familiarize the peoples of Africa with the objectives and policies aimed at integrating the African Continent within the framework of the establishment of the African Union;
5. promote peace, security and stability;
6. contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;
7. facilitate cooperation and development in Africa;
8. strengthen Continental solidarity and build a sense of common destiny among the peoples of Africa; and
9. facilitate cooperation among Regional Economic Communities and their Parliamentary fora."

Article 11 on the functions and powers reads as follows:

"The Pan-African Parliament shall be vested with legislative powers to be defined by the Assembly. However, during the first term of its existence, the Pan-African Parliament shall exercise advisory and consultative powers only. In this regard, it may:

- Examine, discuss or express an opinion on any matter, either on its own initiative or at the request of the Assembly or other policy organs and make any recommendations it may deem fit relating to, *inter alia*, matters pertaining to respect of human

rights, the consolidation of democratic institutions and the culture of democracy, as well as the promotion of good governance and the rule of law.
- Discuss its budget and the budget of the Community and make recommendations thereon prior to its approval by the Assembly.
- Work towards the harmonization or co-ordination of the laws of Member States.
- Make recommendations aimed at contributing to the attainment of the objectives of the OAU/AEC and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them.
- Request officials of the OAU/AEC to attend its sessions, produce documents or assist in the discharge of its duties.
- Promote the programmes and objectives of the OAU/AEC, in the constituencies of the Member States.
- Promote the coordination and harmonization of policies, measures, programmes and activities of the Regional Economic Communities and the parliamentary fora of Africa.
- Adopt its Rules of Procedure, elect its own President and propose to the Council and the Assembly the size and nature of the support staff of the Pan-African Parliament.
- Perform such other functions as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol."

During its interim period, the Pan-African Parliament will effectively be an assembly of parliamentarians – not dissimilar to the various regional parliamentary bodies in Southern, Western and Eastern Africa that have been established in recent years. Inevitably, the initial impact of the continental body on the political landscape traditionally dominated by strong men (no women yet) and executive diktat will be limited – but its ability to make an impact will grow. While it is important to appreciate that the PAP can do very little if there is no room for such engagement at the level of AU Heads of State and Government, the establishment of the Parliament itself reflects the recognition by Heads of State for exactly such a role. The question remains, however: what effect, if any, will a PAP opinion or recommendation have on African Heads of State and Government? This question is even more pertinent considering Ms Ibengwe's view that the PAP needs to play an oversight role and "hold accountable certain leadership for not doing the right things on the African continent".[20] Legally, this power configuration is not possible during the current interim period of the parliament. That will only be possible once it has evolved into an institution with real legislative powers. To this end, the Protocol envisions a review conference after five years and then every ten years "…to review the operation and effectiveness of this Protocol, with a view to ensuring that the objectives and purposes …, as well as the vision underlying the Protocol, are being realized".[21]

In considering the long road ahead, one should perhaps reflect on the evolution of the European Parliament to place expectations of PAP into context. The first direct elections for the European Parliament were held in 1979, 27 years after it was established in 1952. At the time of writing, it had not achieved the status of a fully-fledged parliament but rather that of a supra-parliament, an additional layer of legislative authority to EU member states, rather than infringing substantively upon that of national assemblies.[22]

There can be little argument about the need for a governance framework that will enable the ordinary African to participate in and shape his/her own future. Nor can there be any doubt about the centrality of democracy in a discussion on African development.

Although the early years of African liberation were heady times, most of the developmental expectations expressed by African leaders rapidly came undone and have remained unfulfilled, often because of misrule and the abuse of executive power. Today 40% of Africans live below the poverty threshold and 33 of the 48 least developed countries are in Africa. Politically, participation in governance is often restricted to a small ethnic, family or business/political elite. It is largely left to exceptions such as Botswana, Mauritius, South

Africa, Ghana and a few others to prove that African development has as much potential as that of other regions.

While development indicators have often been negative, democratization in Africa is a steadily expanding reality. Recent years have seen a significant growth in the number of democracies on the African continent even if few African countries can rightfully claim to be 'substantively democratic'. Much remains to be done, however. Many national parliaments reflect little more than theoretical tolerance for opposition, perform cursory or no oversight over the executive and often do not have the means to do so, even if they had the will.

Perhaps the most serious practical challenge for PAP will eventually be finding a technical and legal consensus amongst Francophone, Anglophone, Lusophone and those African countries with Islamist legal systems. It is one matter to draft general advice on matters of governance and suggested practices but quite another to craft a common, legal approach to human rights, democracy, freedom of speech and so on. Consider the challenges relevant to the Republic of Kenya (with its Westminster heritage), the Democratic Republic of Congo (and its Belgian colonial origins), the Federal Republic of Ethiopia (with its distinct characteristics), Mozambique (following a Lusophone tradition), and the Islamic Republic of Egypt (with its mixture of Islamism and secularism). The extent of this challenge is evident in the amount of time and energy required to draft international protocols and conventions such as the Palermo Convention on Organized Crime. Africa's experience will be no different, but if the European Parliament can muddle its way forward, confronted with much more sophisticated and entrenched legally-binding systems, there is no reason why Africa cannot do so, and probably more rapidly.

PAP and Regional Parliaments[23]

Article 18 of the PAP Protocol stipulates that the PAP "shall work in close collaboration with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative organs of Member States". It further calls for the PAP to "convene annual consultative fora" with these organs, currently in existence in all regions of Africa with the exception of the North.

The SADC Parliamentary Forum was formally launched in July 1996 and is technically the oldest regional parliamentary structure. However, contrary to the situation in West and East Africa, the mandate of the SADC structure is extremely limited.[24] The Protocol for the Economic Community of West African States (ECOWAS) Parliament was signed in 1994 and entered into force in March 2000, holding its first session in January 2001. Of all the regional organizations only the ECOWAS founding document foresees direct general elections of its parliamentarians – one of PAP's ambitions. In all other instances, and currently in West Africa, members of the various regional parliamentary fora are selected from national parliaments. To complicate West African matters further, a treaty to establish the Parliament of the West African Economic and Monetary Union (UEMOA) was signed in January 2003. All member states of UEMOA[25] are also members of ECOWAS and it is unclear how this arrangement will proceed.

Turning to the greater Horn of Africa, the East Africa Legislative Assembly was inaugurated and held its first sitting in November 2001. This is the second attempt to set up a regional assembly following the collapse of the East African Community in 1977. The East Africa Legislative Assembly is the only regional parliament with any law-making functions, setting itself apart from others such as PAP and ECOWAS and their (current) advisory functions.[26]

The founding protocol of the Inter-Parliamentary Union of the Inter-Governmental Authority on Development (IGAD) Member States was only signed by the speakers of the national parliaments in February 2004 and is currently awaiting ratification. The same applies to the Network of Parliamentarians of the Economic Community of Central African States (ECCAS). Its founding protocol was adopted in 2002 but the grouping is not very active.

The relationship between these fora and the

PAP may appear simple from the point of view of the PAP Protocol, but will inevitably be complex in practice. Writing about the advisory competencies evident in the various regional parliaments, Ulf Terlinden points out that these range from debates, consultations and recommendations to proposals and inquiries. He continues: "Set aside the wording, two questions determine the strength of these advisory rights: Is it obligatory for regional executives and the inter-governmental decision-making bodies (Councils and Summits) to consult the RAs [Regional Assemblies]? and, will their opinion have to be observed?"[27] While PAP may "examine, discuss or express an opinion on any matter … and make any recommendations it may deem fit"[28], the continental body's competencies are largely orientated towards its internal procedural requirements (such as discussing its own budget and adopting rules of procedure). Even its budget is a recommendation to the Assembly. PAP's oversight and inquiry role is further circumscribed by the fact that it may only request, but cannot demand or compel officials from the Commission to attend its session or produce documents, leaving most of its functions in the domain of advocacy for the time being. In fact it can be argued that PAP is largely a political project to build legitimacy and support for the larger pan-African integration scheme rather than a serious tool for integration itself.

The relationship between the various sub-regional parliaments and PAP is bound to complicate matters. Is Africa going to have parliaments with concurrent powers at national, regional and continental levels? Or do we foresee the development of specific competencies at each of these levels similar, for example, to the entrenched competencies from local to provincial to national level in a country such as South Africa? These questions are not clearly addressed in the Protocol. It does not follow that having ratified the PAP Protocol, regional or national parliaments will respect the decisions taken at the continental parliament level, especially because: "The structural institutional arrangement remains strikingly undefined."[29] Against this background, it would be difficult to avoid a series of amendments to harmonize or clarify the increasingly complex continental architecture. For example, the Commission on Human and Peoples' Rights deals with a range of human rights issues on which the PAP may also wish to formulate an opinion. At times the PAP might want to table such opinions before the Court when Article 4(1) prevents OAU/AU Organs to provide an opinion to the Court when the subject of the opinion is "related to a matter being examined by the Commission".[30]

A Participatory Tool for the Ordinary?

Eventually, once all 53 member states of the Union have ratified the PAP Protocol and dispatched their representatives, Gallagher Estate will be host to 265 parliamentarians from across the continent – each parliamentarian will represent roughly three million Africans.

Not the least of the challenges facing PAP is how to ensure the participation of ordinary Africans in discussions and decision-making on the problems and challenges facing the continent. This, and the role of PAP in advancing democracy and human rights, is repeated at various points in the Protocol. Having described the PAP as a revolution, President Thabo Mbeki observes: "No genuine revolution has ever succeeded by relying on the actions of a revolutionary elite acting outside of the involvement of the masses of the people, or predicated on the demobilisation and immobilisation of the masses."[31]

If the participation of the masses is finally operationalised within the PAP and other AU structures, it would certainly be a quantum leap in the efforts to change the political context in Africa: which is ".characterised, in many instances, by an over-centralization of power and impediments to the effective participation of the overwhelming majority of the people in social, political and economic development."[32]

Inevitably, PAP will only succeed in realizing its ambitions towards popular participation through direct elections – a very distant prospect indeed. Until then, the current prac-

tice will probably remain, with each country represented by five members that are "elected or designated by the respective National Parliaments…at least one of whom must be a woman."[33]

The Protocol also appears to reflect a desire to move beyond the equal number of MPs per country at some point in the future. The use of relative size is currently only used in the ECOWAS parliament – reflecting the fact that Nigerians constitute more than half of the total population of the Community.[34]

Apart from electoral challenges, generating public interest in the affairs of the PAP beyond the initial surge of interest that accompanied the first two sessions will not be easy – by recent admission of the Speaker of the South African national assembly, Baleka Mbete[35] and demonstrated by the low turnout during the 2004 European Parliamentary elections.

Funding Arrangements

The costs of PAP can be divided into those that will be carried by the Commission as part of the AU budget, those that will be for the account of Member States whose MPs attend sessions and finally, the costs to South Africa as host country.

The host country obviously has the duty to provide "furnished and equipped premises for the PAP."[36] Days before the second session of PAP in Gallagher Estate, the SA Department of Foreign Affairs indicated that, as from 2005, it would budget an amount of R61 million per year (roughly US$10 million) for PAP.[37] The host country agreement requires that South Africa provide the venue, office accommodation, IT support, local transport and accommodation for the president.[38] Construction and infrastructure costs aside, it is important to bear in mind that South Africa will draw significant material and other benefits over the longer term. Not only does the influx of parliamentarians present a commercial benefit, there are less tangible benefits such as the related prestige and the role that the Parliament would play as a tool for continental transformation. South Africa will continue to benefit financially from PAP long after the current concerns about costs have disappeared.

As part of the Commissions' "vision and mission" consultations, AU Commission chairperson, President Alpha Oumar Konare, presented a strong motivation for an annual budget of US$571,2 million to AU Heads of State at the July Summit. The 2004 annual budget came to just US$43 million.[39] Article 15(1) of the PAP protocol stipulates that the PAP budget is an "integral part of the regular budget" of the African Union. The African Union must therefore, as part of its regular budget, cover all other costs related to the running of the Parliament. Hence, the Strategic Plan of the AU that Konare presented included an indicative amount of US$10 million per annum for PAP.

That the views of the Commission and PAP were separated by a gulf was reflected in PAP's request for a budget of US$21 million presented to the Assembly at the same meeting. Given these disparities, the Summit eventually authorized the Permanent Representatives Committee to consider and approve a budget for PAP for the remainder of 2004, and directed the Commission to prepare a more realistic budget for 2005 by, amongst others, reducing the duration of sessions. During the discussion, it also became apparent that a large part of the request from PAP consisted of per diem, sitting and other allowances that were to be paid to MPs from the Commission budget. Hence the Summit also decided that countries must themselves bear the expenses for the participation of their MPs in PAP, including air tickets, per diem, sitting and responsibility allowances, as well as the Solidarity Fund, medical insurance and any other allowances and expenses during the first five years of its existence.[40] In this manner, the Assembly ring-fenced its own financial obligations and placed the onus on Member States to cover the costs of their MPs nominated to attend PAP. This approach made eminent sense since the relevant MPs are already paid in their respective countries, although often not very well. Each country would therefore decide on any additional out of pocket

expenses that it was prepared to cover.

Having been frustrated in their first attempt at securing what was generally perceived to be an excessive budget, PAP had an opportunity to reflect upon these decisions during its second session in September/October 2004. Its subsequent recommendations to the Assembly (due to meet in February 2005) were: to try and remove PAP from the budgetary oversight role of the PRC; to get an indication of the resources available to PAP before budgeting began; to actively participate in the budgeting process; and to explore alternative sources of funding.[41]

A subsequent meeting of the Executive Council during December 2004 eventually agreed on an annual budget of US$158 million for the Commission for 2005, consisting of an amount of US$63 million from assessed contributions from member states and US$95 million from voluntary contributions. These figures included a figure of US$5,6 million for PAP as part of the 2005 budget of the AU Commission.[42]

What Power to PAP?

Looking to the future, PAP is off to a better start than most observers probably expected. At the same time, the prospect of meaningful legislative powers remains a distant one. It is useful, therefore, to consider a number of measures and initiatives that PAP could begin if it wishes to advance its powers and utility. For example, it could:

Develop the capacity or seek capacity to conduct or commission research on pertinent issues for further recommendation to the Assembly. The Commission in Addis Ababa does not currently have the capacity for independent research and is constrained by the close observation of member states in any expansion of its activities in areas such as governance, human rights and democracy. The Parliament could therefore usefully conduct/commission research and recommend appropriate policy measures for consideration by the Assembly. It is important to underline the fact that the Heads of State are required to consider such recommendations and that they cannot merely ignore or sweep them under the carpet. Where issues are of an extremely sensitive or highly political nature such as differing views on elections, this could provide a useful alternative vehicle through which to table concerns at Heads of State level.

Send observer missions to countries holding elections on the continent in order to formulate an independent position, to come up with advice on how to effect improvements in the electoral process of AU Member States and thereby contribute to the strengthening of democracy on the continent.

Send assessment teams to African countries experiencing conflict to free the parliament from having to rely on information emanating from other sources. This would also give the parliament a first-hand view of the humanitarian situation on the ground, an important step toward a sense of urgency in decision-making. The mission to Darfur has set an important positive precedent in this regard.

Adopt independent positions on a range of issues (including human rights and governance issues) without being curtailed by positions taken by Heads of State. In this regard, the parliament should be allowed to send fact finding or assessment missions to any country suspected of human rights violations. In the same manner country reports submitted to the Commission for Human and Peoples' Rights may also be submitted to the PAP for discussion and to promote transparency.

Be given the powers to appoint or recommend a short-list of the Commissioners for appointment by the Assembly to the African Commission on Human and People's Rights to the Assembly. The 11 Commissioners are currently elected by Heads of State[43] who do not have the time to deal with changing circumstances on this matter. As a result, active politicians currently serve on the Commission and appointments are often of an intensely political nature – a situation that obviously undermines the legitimacy of the Commission. Involving PAP in the selection process would enhance the integrity and perceived independence of the Commission.

Be empowered to appoint or recommend a

shortlist of judges to the African Court of Justice. Following the entry into force in 2004 of the Protocol on the Court of Justice, the AU Summit decided to integrate this Court with the African Court of Human and Peoples' Rights. The Protocol to establish the latter does not yet have sufficient ratifications to enter into force and the AU Commission is therefore considering how to move ahead (and how to interpret) the decision on integration. The Protocol on the appointment of the 11 judges to the Court of Justice requires that they be elected by the Assembly.[44]

Conclusion

The Protocol establishing PAP reflects a strong commitment to the promotion of democratic principles and good governance, and the promotion and protection of human and peoples' rights, transparency and accountability in Africa.[45] It is in this domain that PAP could make its greatest contribution. The decision to send a delegation to assess the situation in Western Sudan (Darfur) creates the hope that the parliament will not shy away from practical engagement in continental issues. This and other functions are squarely in line with the view that improvements in governance elsewhere in the region are in the direct interest of each individual African country.

If the continental parliament helps achieve this objective, it would have moved closer to what President Mbeki envisages: a parliament that will help Africans "change their material conditions so that they escape from the jaws of poverty and their countries and continent from the clutches of underdevelopment".[46] This is the vision South Africa holds for the continent and hopes to achieve through, inter alia, its hosting of the PAP.

PAP faces a welter of challenges right now though its potential will only be realised in the distant future. But it also presents opportunities and new ways of engaging with Africa's leaders. Such a role will also require a concerted effort by South Africa as host, the African Union and PAP members to work to maintain interest in this new institution.

Notes

1 Only time will tell if the decision to locate PAP in Gauteng reflects a future intention to revive the debate about moving the South African Parliament away from Cape Town.
2 The 2004 AU Assembly reversed an earlier decision to separate the African Court on Human and Peoples' Rights from the Court of Justice (Assembly/AU/Dec.45 (III) DECISION ON THE SEATS OF THE AFRICAN UNION) and decided that the two courts should be integrated into a single court. The Assembly requested the Chairperson to work out the modalities on integration of the two courts and to submit a report tot the next Ordinary Session that will occur in Abuja at the end of January 2005. Mauritius and Sudan had earlier offered to host the Court of Justice and The Gambia and Lesotho to host the Court on Human and People's Rights.
3 Constitutive Act, Article 22 (1)
4 Currently ECOSOCC will host its first General Assembly meeting in Abuja early in 2005 and given the role that Nigeria has played in infusing civil society engagement in the African Union is probably best placed to host the Council if the need for a permanent location arises.
5 Enthused by Ginwala, the South African Foreign Affairs Portfolio Committee and a special parliamentary committee on PAP had considered and proposed a host of amendments to PAPs rules of procedure.
6 The spelling of names differs from that used during the Second Session in South Africa.
7 Article 14 (3)
8 PAP-Res 002/04, Resolutions and Recommendations, Pan-African Parliament, Second Ordinary Session, 16 September – 1st October 2004, Midrand, South Africa, par 2
9 Ibid, par 5.
10 PAP-Res 004/04, par 2 and 6
11 PAP-Rec 002/04, par 3
12 The Panel of the Wise is constituted under the terms of Article 11 of the PSC Protocol, composed of five highly respected African Personalities drawn from various segments of society. Members are not supposed to hold active political office at the time of their appointment or during their tenure as Panel members. Panel members are nominated by the Chairperson of the Commission after appropriate consultations, on the basis of regional and gender representation and appointed by decision of the Assembly for a period of three years (as apposed to the five-year term of office of PAP), although eligible for reappointment for only one more term. Key task is to advise and assist the Chairperson of the Commission and the PSC in conflict prevention and mediation.
13 PAP-Rec 003/04, par 1 and 3
14 Thabo Mbeki, *ANC Today*, Vol 4, No. 27, 9-15 July, p.6.

15 African Commission, May 2004, p 22.
16 Reflected in Article 5 of the AU Constitutive Act.
17 The Commission sees itself of the 'engine room of the Union' and Member States 'as the political project managers'. See page 11 of the Commission of the African Union: 2004 – 2007 Strategic Plan, Volume 2.
18 See Articles 7 and 14 of the Treaty establishing the African Economic Community.
19 In Article 33(2)
20 *Sunday Times,* 26 September 2004, p. 18.
21 Article 25.
22 U. Terlinden, African Regional Parliaments – Engines of Integration and Democratisation?, Bonn, September 2004, p 15.
23 This section draws heavily on Terlinden, op cit.
24 Lesotho and Namibia (that has offered to host the SADC parliament) are among the leading proponents in support of the transformation of the SADC Parliamentary Forum into a full-fledged regional parliament.
25 Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.
26 There is also a second difference between this and other regional parliamentary fora. While MPs at national level nominate representatives to the East Africa Legislative Assembly, they are themselves excluded from candidacy. Terlinden, op cit, p 4.
27 Terlinden, op cit, p 6.
28 Article 11(1).
29 Terlinden, op cit, p 14.
30 Protocol to the Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
31 Terlinden, op cit, p.6.
32 African Charter for Popular Participation in Development and Transformation, Arusha, 1990, p.4.
33 Articles 5(1) and 4(2)
34 Hence Nigeria has 35 of the 120 ECOWAS Members of Parliament compared to the five to eight each for all other ECOWAS countries.
35 *City Press,* 8 August 2004, p.4.
36 Decisions of the 5th Ordinary Session of the AU Executive Council, Doc. EX.CL/90(V).
37 This excludes the construction costs of a permanent venue.
38 Department of Foreign Affairs, Press release regarding hosting the Pan-African Parliament, 13 September 2004.
39 See Strategic Plan of the Commission of the African Union, Volume 2: 2004-2007 Strategic Framework of the Commission of the African Union, May 2004, p 74. Whilst a number of donors have indicated that they have earmarked significant funds in support of the AU, this will have to be matched by an increase in member state contributions. In recent years the has Union has suffered fluctuating but consistent levels of membership arrears of some US$12 million.
40 The Assembly also decided that members of the Bureau would not reside at the headquarters during the first term of the Parliament. Decision on the Budget of the Pan-African Parliament for the Period July to December 2004, EX.CL/Dec.98(V)
41 PAP-Rec 004/04, par 3 and 4.
42 At one stage during the July Summit it was proposed that the AU allocates $500 000 for the remainder of 2004 to serve as an interim budget in the absence of a realistic proviso. See Assembly/AU/Dec.39(III)
43 African (Banjul) Charter on Human and Peoples' Rights, Article 33
44 Protocol on the Court of Justice of the African Union, Article 7.
45 See the preamble, Articles 3, (2), 3(3) and 11(1)
46 Thabo Mbeki, Address at the Opening of the Second Session of the Pan-African Parliament in Midrand, South Africa, 16 September 2004.

ESSAY

THE BOTSWANA DEFENCE FORCE

Evolution of a professional African military

DAN HENK

When Botswana arrived at independence in 1966, it had no army, depending instead on a police force with deep roots in the colonial era. The country waited another eleven years before creating a military and within a quarter of a century had seen it develop into a capable, well-educated and self-disciplined force that was attracting some of the nation's most talented young people. It had also become the government's institution of choice for addressing the country's most pressing security dilemmas, whether environmental catastrophe or serious crime, and had performed sterling service in regional peace operations. To its members and external observers, it emphasised its professionalism and service, enjoying a high level of respect in the nation as a whole. Given the generally poor reputation of armies in Africa, this qualifies as a notable achievement.

Introduction

When Botswana arrived at independence in 1966, it had no army, depending instead on a police force with deep roots in the colonial era.[1] The country waited another eleven years before creating a military and within a quarter of a century had seen it develop into a capable, well-educated and self-disciplined force that was attracting some of the nation's most talented young people. It had also become the government's institution of choice for addressing the country's most pressing security dilemmas, whether environmental catastrophe or serious crime, and had performed sterling service in regional peace operations. To its members and external observers, it emphasised its professionalism and service, enjoying a high level of respect in the nation as a whole. Given the generally poor reputation of armies in Africa, this qualifies as a notable achievement.

The Botswana's military is all the more remarkable in that it is maintained by a government noted for moderate and conciliatory foreign policies and is drawn from a society that emphasises consultation and consensus rather than military power.[2] Botswana's political and economic successes have been chronicled elsewhere,[3] and civil-military relations in the country have been examined by capable scholars,[4] so those issues need not be explored here. The purpose of this article is simply to describe the evolution of Botswana's military establishment, note some of its current dimensions, and call attention to several of its key features. Whether Botswana's model can (or

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should) be replicated elsewhere is not a primary interest of this study, but Botswana's experience offers lessons that may well be of concern to any student of military affairs in Africa.

Origins of the Botswana Defence Force

At the time of independence Botswana's new leaders deliberately rejected the opportunity to establish a national army, opting instead for a small paramilitary capability in a Police Mobile Unit.[5] The country's modest resources reinforced the decision: there simply was no money for a larger public sector. That choice, however, was soon severely challenged by the violent decolonisation struggles in the region, a traumatic process directly involving several of Botswana's neighbours including Rhodesia (now Zimbabwe), Angola, South West Africa (now Namibia) and ultimately South Africa. Military and insurgent forces in these conflicts were significantly larger and better armed than Botswana's small police force. None of the neighbours hesitated to violate Botswana's borders when it suited their purposes.

Rhodesia posed the most pressing security challenge in the early years. In 1965, in an effort to avert black majority rule, the white minority government of that colony made a unilateral declaration of independence from the United Kingdom. By the late 1960s, Rhodesia's government was engaged in an escalating conflict against two indigenous insurgent armies.[6] The war drove a steady flow of refugees into north-eastern Botswana. It also motivated Rhodesian insurgents to seek safe-haven and (later) lines of communication and routes of infiltration through Botswana among a population that generally was sympathetic to their struggle. Botswana's government studiously refrained from involving itself in liberation wars, but by the mid-1970s Rhodesian security forces were making regular incursions into Botswana to kidnap or kill anti-Rhodesian dissidents.[7] These operations did not discriminate between insurgents and local citizens; nor did the Rhodesians make significant efforts to limit collateral damage.

The Rhodesians were not the only threat on the borders. South African agents kept tabs on anti-apartheid activists in Botswana and by the late 1970s had been responsible for a number of assassinations and kidnappings in the country.[8] At the same time, the conflict between the South African administration and its insurgent opponents in neighbouring South West Africa (now Namibia) increased in intensity, threatening Botswana's north and west border regions with flows of refugees and armed groups. The Botswana Police could not cope with these threats, and citizens threatened by the cross-border violence increasingly clamoured for protection from their government in Gaborone.[9]

As a result, in April 1977 the country reversed its earlier decision, and by Act of Parliament, established the Botswana Defence Force (BDF), an unambiguously military establishment.[10] The nucleus of the new military – 132 men – was drawn from the Police Mobile Unit.[11] The Deputy Botswana Police Commissioner, Mompati S Merafhe, was commissioned a major general and appointed commander of the new force.[12] His second-in-command, holding the rank of brigadier, was Seretse Khama Ian Khama, the 24-year-old Sandhurst-trained son of Botswana's founding president.[13] By the end of 1977 the new Botswana Defence Force numbered some 600 men. It contained five light infantry companies, a reconnaissance company, an air arm and a variety of small support units.[14] It was headquartered at a military installation just north of Botswana's capital city with the Air Arm stationed at a base within Gaborone itself.[15]

The establishment of the BDF was clearly a reaction to the deteriorating regional security situation in the 1970s, but Botswana's options had also been fundamentally transformed by the discovery of diamonds earlier in the decade. Botswana would ultimately become the world's leading producer of gem diamonds, and the government proved very

astute in the management of its newfound mineral riches. By the late 1970s the new diamond wealth was flowing to the government's priorities, including defence, in a manner unthinkable in the years immediately after independence.[16]

The early years

While the new military establishment initially was quite popular among Botswana's citizens, its capabilities were very limited.[17] The numbers were small and the equipment was very light. The BDF lacked the training and experience to confront the Special Forces of its belligerent neighbours. This was made painfully clear in February 1978, less than a year after its founding. Responding to reports of a Rhodesian military incursion along Botswana's north-eastern border near the village of Lesoma, a BDF-mounted patrol drove directly into a Rhodesian ambush, sustaining 15 dead.[18] The 'Lesoma Incident' was a tragedy and a harsh lesson for the fledgling force. But it galvanised an intention among Botswana's leaders to improve the country's military capabilities. The Lesoma tragedy is still recalled in Botswana as a key event in BDF history.[19]

Within a decade of its founding, the BDF had grown by a factor of ten – to approximately 6 000 personnel. By 1988 its ground forces had been organised into two infantry brigades, one based in Gaborone and the other in Francistown.[20] Its reconnaissance company had grown into a well-trained commando squadron of about 120 personnel. Also by this time, the BDF had acquired substantially greater firepower and mobility, with a modest inventory of US-made Cadillac-Gage V-150 light-wheeled fighting vehicles and Soviet-designed BTR-60 armoured personnel carriers. Its air arm, at the time still based in Gaborone, now included about a dozen Bell helicopters, four Casa light transport aircraft, and eleven British-made Strikemaster light attack jets.[21] But the numbers alone do not tell the whole story. The BDF had begun to develop productive relationships with foreign partners.

The partnerships ranged across a spectrum of training and materiel acquisition. By the mid-1980s, US and British forces were conducting small-scale annual combined exercises with the BDF in Botswana. At the same time, the country engaged in a vigorous effort to broaden its military officers, sending them *en masse* to military schools in the United States, Canada, the United Kingdom and India. Among these were the first BDF personnel to attend command and staff and war colleges, essential education for senior military leaders in the armies of developed countries. Along with various early equipment acquisitions in the 1980s, the government of Botswana invited the government of India to send a sizeable military team, primarily to assist in the maintenance and upkeep of the growing inventory of equipment, a bilateral relationship that has endured to the present.[22] The various partnerships contributed to substantial and growing professionalism, evident in the BDF by the end of the 1980s, but it was neither quickly nor easily achieved.

The 1980s were troubled years in southern Africa, and Botswana's military struggled during this period to define itself and its role. Its continuing inability to protect the country's long and porous borders eroded public confidence, and several egregious acts of indiscipline by BDF personnel in the 1980s tarnished its image in Botswana.[23] Military incursions from neighbouring Rhodesia continued until that country's transition to majority rule (as independent, majority-ruled Zimbabwe) in 1980, and the border remained tense for years afterwards as competing parties in Zimbabwe struggled for ascendancy.[24] Meanwhile, the threat from South Africa persisted, and Botswana's military improvements could never match its neighbour's might, nor could the BDF deter attacks against suspected insurgent targets. This was illustrated most dramatically by a brazen, large-scale South African raid in June 1985 against African National Congress (ANC) targets in Gaborone that left six people wounded and twelve dead, including two Botswana citizens and a Dutch expatriate. The South Africans accomplished their objectives and withdrew

without significant casualties.[25] The incursion was followed by humiliating rumours – vigorously denied by the BDF leadership - that the South Africans had given advance notice of an impending raid and had warned Botswana's military not to interfere.[26]

In the 1980s the South Africans continued their fight against insurgents in neighbouring Namibia and regularly intervened in the civil war in Angola on the side of Jonas Savimbi's UNITA rebels.[27] These conflicts were waged in close proximity to Botswana's northern border, sending recurring waves of refugees into Namibia. Groups of armed men circulated through the entire region, some connected to the warring parties, others engaged in predatory criminal behaviour. By the mid-1980s the BDF was conducting sporadic patrolling of the northern border area in an effort to provide some border security, although the small size of the force in comparison to the length of ill-defined border posed considerable challenges.

One significant menace that grew throughout the 1980s was poaching of Botswana's large animals - its 'megafauna'. The game-rich northern areas of the country were particularly threatened. Well-armed gangs of poachers from neighbouring countries took advantage of the regional instability and the porous borders to attack Botswana's rhinos and elephants.[28] The gangs also robbed local citizens and safari companies. In 1987 the BDF assumed an explicit anti-poaching role, but the new mission was risky – at least one other country in the region had deployed its military in anti-poaching roles and had failed.[29] Failure in Botswana (or 'over-zealous' execution) could have significantly discredited a force only a decade old. Moreover, the new mission came at a time that the country's long borders were still threatened by an aggressive South Africa, and Botswana's 6 000-man military had neither the numbers nor the mobility and combat power to confront the South Africans. Yet, in hindsight, the gamble paid off. By hard effort and effective operations, the BDF largely ended the megafauna poaching, and it has maintained deterrent forces in the northern game areas to the present day. The success of this mission has been a public relations bonanza for the BDF.[30]

A significant milestone occurred in 1989, when the founding commander of the BDF, Lieutenant General Mompati Merafhe, retired to enter politics[31] and his former deputy, Seretse Khama Ian Khama, was appointed the new commander. Khama brought a different leadership style and new priorities to this role. Like his predecessor, Khama was a strict disciplinarian, bordering on the puritanical. However, he had the reputation of being a 'hands-on' leader who cared about his troops, inspected frequently, and fought successfully for troop benefits. This made him popular among the rank and file. One of Khama's first endeavours was construction of a major new military facility –Thebephatshwa Airbase – near the town of Molepolole, some 50 km north-west of the capital - a massive project begun in 1989 and completed only in the mid-1990s.[32] This base would ultimately house Botswana's growing inventory of military aircraft and its commando squadron. The new military commander was secretive about his base and about BDF operations in general, which generated some unease among neighbouring countries and unanswered questions in Botswana itself.[33]

New roles and missions in the 1990s

The security situation in southern Africa changed dramatically in the 1990s. The advent of the F W de Klerk government in South Africa in 1989 accelerated a process of political reform that culminated in South Africa's transition to majority rule in 1994. During this period, after years of tortuous negotiations, the South Africans withdrew their forces from Angola and Namibia, and Namibia achieved its independence in 1990.[34] By the early 1990s the threat of South African military intervention in Botswana had largely dissipated, although there was still a distinct possibility that South Africa's future transition to majority rule could send waves of refugees across the border into Botswana. The border areas with Zimbabwe and Namibia also remained troubled.[35]

In the 1990s (and even into the new century) Botswana's relationship with newly independent Namibia was continuously beset with security-related squabbles. In 1992 a crisis erupted over ownership of a small, seasonally inundated island in the Chobe River along the northern border, initiated when a small Namibian military force occupied the island.[36] The conflicting border claims resulted in some military reinforcements of the area and a propaganda campaign waged in the media of both countries, though tensions subsided when both agreed to international arbitration in 1995.[37] However, by 1998 a low-intensity secessionist insurgency had sputtered to life in Namibia's Caprivi Strip (the narrow strip of Namibian territory bordering Botswana on the north). Namibian refugees and insurgents sought safe-haven in Botswana, requiring additional BDF attention to the security of the northern border. Since the 1970s Botswana, with a tradition of clemency for political refugees, had maintained a refugee camp at Dukwe in northern Botswana, directing asylum seekers and displaced persons to the camp. However, in 2000 Namibia's leaders accused Botswana of harbouring insurgents in the camp and demanded their repatriation, an issue that troubled relations until it was settled in 2003.[38]

The 1990s were significant years for the expansion of roles and missions of the BDF, particularly as it began to deploy for peace operations. The year 1992 marked the first external mission – when the BDF deployed for US-led peacekeeping operations in Somalia.[39] Botswana dispatched a multi-company infantry task force.[40] In its first several months in Somalia, the BDF troops were attached to a US Marine Battalion in Mogadishu and performed the same peacekeeping duties as the marines, earning praise for their professionalism.[41] By March 1993 the US-led operation had transitioned into a UN operation,[42] and the BDF commitment continued until the UN operation ended in August 1994. During this period the BDF rotated four separate troop contingents through Somalia, using its military transport aircraft in regular flights to resupply its forces.[43] Despite the unresolved situation in Somalia when the UN departed in 1994, the experience was positive for Botswana, providing the BDF with new experience, good public relations exposure and greater confidence in its own abilities. The deployment proved popular with officers and men.[44]

After the deployment to Somalia, Botswana began to dispatch military personnel as peace operations observers elsewhere in Africa. These included a 14-member BDF observer team in Rwanda in 1993[45] and two military officers to the National Peacekeeping Force deployed in South Africa to facilitate that country's first democratic multi-party elections in 1994.[46] Perhaps as a consequence of the positive BDF experience in Somalia, Botswana volunteered in 1993 to participate in a UN peacekeeping mission in Mozambique.[47] In a year-long commitment, it furnished the UN Command with a battalion-sized infantry contingent whose primary role was to provide security along northern Mozambique's troubled Tete transportation corridor. The BDF also engaged in various desperately needed humanitarian relief projects in Mozambique. These operations, too, were regarded as a considerable success by both the BDF participants and external observers.[48]

The year 1994 was significant in southern Africa. South Africa transitioned to majority rule in April of that year and an Africa National Congress (ANC) government came to power under the leadership of Nelson Mandela. Relations between South Africa and Botswana improved immediately. These events coincided with a political crisis in the small southern African kingdom of Lesotho, resulting in instability and violence. Reacting to the crisis in Lesotho, several southern African countries (including South Africa and Botswana) consulted on military intervention to re-establish order. The crisis ebbed without external intervention, though the situation remained unstable. Then, in 1998, order again broke down in Lesotho and elements of Lesotho's small army mutinied. A Southern African Development Community (SADC) task force intervened in September 1998, with

forces from South Africa and Botswana (some 600 troops from South Africa and 380 from Botswana).[49] This intervention began as a messy peace enforcement operation, although order in Lesotho was ultimately restored and the SADC Task Force withdrawn by May 1999.[50] Botswana subsequently contributed to a combined military training programme in Lesotho (with South Africa and Zimbabwe), which lasted until May 2000,[51] followed by a small advisory presence within the Lesotho Ministry of Defence.[52] Since 1998 the Botswana Defence Force has not participated in external operations other than exercises and the small military assistance presence in Lesotho. Senior BDF leaders have characterised this a temporary respite to facilitate 'transformation'[53] and have suggested to local diplomats that they intend to participate in future peace operations in Africa once their reorganisation is complete.[54]

The 1998 intervention in Lesotho reflected a significant new dimension in the evolution of southern African security affairs. Majority rule in South Africa in 1994 led quickly to a redefinition of the Southern African Development Community (SADC), an organisation originally founded to reduce the regional impact of South African hegemony.[55] South Africa joined that community almost immediately after majority rule. The organisation's redefined interests included greater regional commitment to collective security, providing a new structure and forum for consultation on security issues.[56] The inclusion of South Africa seemed to energise an interest in cooperation among regional military establishments, evident in a series of regional joint military exercises begun in 1997. The BDF participated in these regional events.[57]

By the 1990s Botswana's government had committed its military to a recurring series of operations within Botswana itself. In addition to the anti-poaching operations, these included two separate programmes to assist the national police in anti-crime activities,[58] flood relief during years of particularly heavy rain,[59] and participation in national efforts to control livestock diseases (under the purview of the Ministry of Agriculture).[60] In every case, the BDF displayed good planning and competent execution, a performance that it was able to exploit in the local media. Its participation in anti-crime patrols in Botswana's cities has (in the public mind) reduced the level of violent crime. The BDF leadership apparently accepted these tasks with equanimity, and the government of Botswana appears to be very satisfied with the BDF performance. BDF officers stressed to the author in mid-2004 that these were appropriate operations 'in support of civil authority' and indicated that these are roles that the BDF will probably perform again in future situations of national emergency.[61]

Expansion and modernisation in the 1990s

Despite the attenuation of external threats, the 1990s were a period of substantial growth for the Botswana Defence Force. By the end of the decade, the force had surpassed a size of 10 000 personnel. It had also seen substantial increases in its firepower and mobility. Ian Khama, whose nine-year tenure as BDF commander ended in 1998, oversaw much of this expansion and seems to have been a prime mover behind the military growth.[62] Some detail is illustrative.

The BDF Air Arm was significantly upgraded in 1996 by the acquisition from Canada of thirteen CF-5A/D Freedom Fighters, Botwana's first modern combat aircraft.[63] This was followed the next year by the addition of three surplus US Air Force C-130B transport aircraft.[64] These two systems represented a quantum increase in Botswana's air combat and airlift capability. Botswana also acquired new ground force equipment in the mid-1990s, including a twelve-gun battery of new 105 mm howitzers and twenty Alvis Scorpion light tanks from the United Kingdom, along with fifty Steyr-Daimler-Puch SK 105 light tanks from Austria.[65] At about the same time Botswana tried to purchase 54 surplus (German-made) Leopard-1 main battle tanks from the Netherlands, but this failed when Germany blocked the sale.[66] The negotiations nonetheless indicated a continuing BDF

interest in a credible armoured force.

By the late 1990s the BDF leadership had begun to describe an interest in 'transformation' - a topic much in vogue in the military establishments of the developed West. This process in the Botswana Defence Force appears to have at least two dimensions. Part of it involves the expansion of the size of the force, the deployment of more modern equipment and the creation of new structure. The second, perhaps more significant, change is a clearer definition of roles and missions. This redefinition may relate to a broad, government-wide initiative to define Botswana's social and economic development (*Vision 2016*).[67] However, they also seem to stem from the personal initiative of the third BDF Commander, Matshenwenyego-Louis Fisher, elevated to the position in 1998. Fisher, a graduate of the US Army Command and General Staff College and US Army War College, has had long exposure to the US emphasis on national military strategy.[68] His tenure has coincided with continuing dramatic expansion of the BDF, and more specifically with an ongoing emphasis on redefined roles and missions, issues typically anchored in a military strategy.[69] Fisher had indicated an intention to retire from the military in late 2004,[70] but seems to have been persuaded by the country's senior political leaders to delay his retirement.

The Botswana Defence Force in 2004

By 2004 the BDF had grown to just over 12 000 personnel (heading towards a planned ultimate level of about 15 000). Its ground forces were being reorganised into three infantry brigades and an armoured brigade. One of the infantry brigades is headquartered near Gaborone, another near Francistown in the north. The headquarters of the third is being organised at Ghanzi in the west of the country. Each of the infantry brigades is responsible for the security of a significant area of the country.[71] The armoured brigade is stationed near Gaborone.

The Botswana Defence Force Air Arm, a force of about 500 personnel organised into five squadrons, is based at Thebephatshwa Air Base near Molepolole (about 50 km northwest of Gaborone). It maintains significant alternate air bases at Francistown and Maun and has access to smaller airfields around the country.[72] It has an inventory of about 45 operational aircraft.[73] Since the mid-1990s, Air Arm upgrading has given it the ability to lift significant numbers of ground force troops throughout the country (and throughout the region). It is able to provide significant aerial reconnaissance and logistic support to ground forces. Its ability to provide air defence or close air support is less clear.

Military expenditure in Botswana has risen steady in the past two decades from US$34,3 million in 1985 to US$228 million in 2003. In the 1990s it averaged 3,8 per cent of the gross domestic product.[74] The BDF is much more generously funded than the national police and (particularly since the 1990s) has been able to realise many of its infrastructural and equipment priorities. The weapons acquisitions programmes in the 1990s resulted in significant increases in the BDF equipment inventory. These acquisitions are widely believed in Botswana to be the personal passion of Ian Khama, the BDF commander from 1989 to 1998.

Botswana's military spending since the early 1990s has raised questions in the region and has sparked some political controversy in the country itself, but Botswana's Executive Branch has not formally explained its rationale to Parliament or the public. However, it is not difficult to identify several likely motivations. Memories of the 1970s and 1980s still rankle, when bellicose neighbours violated Botswana's sovereignty with casual impunity. Despite the growing regional cooperation in the 1990s, Botswana has unresolved issues with all proximate states. Also, with the exception of Zambia and Namibia, virtually all the nearby states have much larger military establishments than Botswana. Botswana's leaders do not seem to consider any regional actor an immediate military threat, but they seem interested in a military capability that provides credibility in any security initiative. The BDF is manifestly not large enough at this

point to pose a significant offensive threat to any neighbouring state, but it is much more capable of rapid deployment to defend Botswana's borders and airspace than it was a mere decade ago.

Organisational culture

Several features of its organisational culture have enhanced BDF capabilities. These include high standards of discipline, emphasis on education, and competent leadership at all levels.[75] The Botswana Defence Force starts with good human material. It is very selective in recruitment of its personnel[76] and education plays a key role in personnel selection and career progression.[77] The BDF sends many of its officers to courses elsewhere in Africa and overseas. Canada, France, India, the United Kingdom and the United States are frequent destinations.[78] One knowledgeable source estimated in 2004 that 75 per cent of BDF officers above the rank of major are graduates of US military schools.[79]

Its operations since the early 1990s have brought the BDF an almost unqualified stream of good publicity. Military service in Botswana now carries substantial prestige, providing notable benefits and interesting employment to its members. Military positions are highly sought after. The BDF sees itself – and citizens see it – as the most capable of the country's 'disciplined services'.[80] Its members believe they are faithful stewards of resources entrusted by the nation to their care. Its professional orientation spills over into resource management. The BDF maintains extensive repair facilities that foreign military observers have found to be well equipped and well staffed. It stresses preventive maintenance in its training programmes. It keeps its weapons, ground vehicles and aircraft in good repair.

The professional behaviour of BDF personnel is encouraged by a generous scale of pay and allowances, correlated since about 2002 with the pay of other civil servants in the country.[81] BDF personnel are well and reliably paid, affording a middle-class standard of living for officers and relative comfort for other ranks. BDF personnel can retire at the end of twenty years of service with a reasonable pension. The regularity and adequacy of remuneration significantly reduces the incentive for graft that has afflicted many other African militaries.[82] The BDF commitment to high standards of professional behaviour is reinforced by a national aversion to corruption ensconced in a long-standing government anti-corruption ethic. This has kept Botswana's public sector remarkably free of that problem, a circumstance that is also true of the country's military establishment.[83]

Issues and concerns

While Botswana can take justifiable pride in the quality and accomplishments of its small defence force, several features of Botswana's civil-military relations, and several characteristics of the BDF itself should provoke concern.

Botswana's progressive economic policies and regular multiparty elections tend to mask the dominance of the ruling party and an executive so strong that one scholar characterises the government as a 'quasi-elected "soft" autocracy' and the governing style as 'authoritarian liberalism'.[84] Considerable power is concentrated in the office of the President. This has very specific ramifications for the military. In the military's founding legislation, the president was designated 'commander in chief', with the prerogative of selecting the Defence Force commander and promoting all officers above the rank of major.[85] The president was also authorised to deploy the military in whole or in part without further consultation. The Act did not create a Ministry of Defence, delegating that role instead to the Office of the President. Nor did the legislation specify any particular role for the National Assembly in the oversight of the military. No mention was made of a legislative role in allocating funding or employment of the force.[86] At least one legislative entity – the Parliamentary Committee on Foreign Affairs, Trade and Security – has a constitutional responsibility to oversee military affairs. However, there is little indication that this committee plays much of a role in military oversight. Legislators presumptive enough to

question security-related allocations are rather peremptorily silenced in parliamentary debate.[87] Scholars and media correspondents have criticised this concentration of power in the executive branch.[88]

The concentration of power is more worrisome in view of a peculiar obsession for secrecy on the part of both the executive branch and the military itself. This not only applies to the large issues of operations and equipment acquisition but also extends to very mundane and seemingly innocuous issues, including the exact size of the force and the levels of pay and allowances for personnel. It has the force of law: a National Security Act enacted by the National Assembly in 1986 prohibits the disclosure of any information the government considers privileged, with penalties of up to 25 years' imprisonment.[89] Not surprisingly, local scholars have criticised the obsession.[90] The quest for secrecy made some sense in the 1980s when Botswana's sovereignty was regularly violated by external forces. It makes much less sense in this era of regional cooperation, when countries increasingly are seeking to engage their attentive publics and their neighbours in productive consultations on issues of regional security.

The powerful position of the executive branch in relationship to the Defence Force raises another key question relating to civil-military relations in Botswana: how are decisions made on substantive issues of national security policy? The most perceptive observers of national politics in Botswana believe that essential security-related decisions are made by a small group of senior officials that are close confidantes of the president, with limited consultation outside this circle, a feature difficult to reconcile with liberal democratic norms of accountability and transparency.[91] Significantly, this inner circle includes the past and present commanders of the BDF.[92] Clearly, the senior military leadership is well represented in the councils of state.

No discussion of politics or military affairs in Botswana can avoid a discussion of Seretse Khama Ian Khama. He is the most eminent member of what might be called the 'first family' of Botswana. His father, Sir Seretse Khama, was a national hero, prominent in the struggle for full national independence, and founder of the party that has governed the country since independence, serving as the country's president from its founding in 1966 until his death in office in 1980.[93] When the Defence Force was created in 1977, Ian Khama was appointed its deputy commander with the rank of brigadier. Twelve years later, in 1989, he acceded to the command of the BDF with the rank of lieutenant general, a post he subsequently held for nine years. Khama's service spanned the formative period of the Defence Force's evolution, and despite his retirement in 1998 to enter politics, he continues to have a close connection with Botswana's military. Khama's current positions of vice-president and party chair of the ruling party are widely believed in Botswana to guarantee his accession to the presidency when the incumbent, Festus Mogae, steps down. However, Khama's activities over the course of his military and political career have provoked controversy and he is accused of having very authoritarian tendencies.[94] Many among Botswana's educated elite view a future Khama presidency with some trepidation.

While the attributes of BDF generally conform to norms of Western military establishments, and would elicit the commendation of Western analysts, a couple may pose problems for future civil-military relations, and could undermine BDF effectiveness. These include elitist tendencies and the possibility of some political factionalism in the force. Each warrants a brief comment.

The benefits and prestige that accrue to the BDF as an organisation, and to its individual members, are responsible for a certain mount of elitism. This is particularly true in comparison to the national police force, which has struggled over the years to recruit and retain the same quality of personnel as the military. The BDF is much more lavishly equipped with high-technology modern equipment than the police, and its role is more prestigious. Botswana's citizens in general, including members of the military, are somewhat contemptuous of police capabilities.[95] The continuing use of the military in internal security roles

probably retards the development of police capabilities and may ultimately involve the military in domestic security controversies that undermine its rapport with the citizenry.[96]

The contemporary roles of the Defence Force are broad for a conventional military, suggesting that the government of Botswana and the BDF subscribe to a wide view of 'security' and consider the Defence Force an appropriate agency for attaining much of it, an issue that has been discussed even in the BDF's own internal media.[97] A clear norm in the BDF is that soldiers should be apolitical servants of the state and have no business involving themselves in partisan political squabbles,[98] but there are unverifiable rumours in the BDF that some of its senior leaders are unenthusiastic about the broad roles, preferring a greater focus on maintaining conventional war fighting skills, but such views (if they exist) certainly are not made public.

There were also rumours in the mid-1990s of some factionalism in the Defence Force, arrayed along the lines of the ruling BDP party's internal politics.[99] The military leaders, of course, vociferously denied these allegations at the time.[100] Officially the Defence Force strongly discourages political activity within the force, and whatever political differences may exist, they are not readily visible to outsiders.

Concluding assessment

Over the course of a quarter of a century Botswana has created and developed a small but highly professional military establishment. The original incentive for creating the force was the desire for protection from external threat, an aspiration ultimately realised more by regional political evolution than by military power. Ironically, the capability of the Botswana Defence Force increased even as the external threat decreased, and it continues to grow. Today, Botswana still fields a military significantly smaller that that of neighbours such as South Africa, Zimbabwe and Angola, and does not seem to have any intention of matching the military power of these regional actors. It does, however, appear to be seeking a military capability to 'play outside its league' – developing a force capable of fulfilling a range of modern roles from protection of national sovereignty to peace enforcement.

Unlike many African military establishments, the Botswana Defence Force enjoys generally good relations with the Botswana public. It appears to be much more highly regarded than it was in the mid-1980s. This has been due in part to its demonstrated competence, and a certain sophistication in its connections with the national media. Since the late 1980s it has been able to portray itself as a highly disciplined force that refrains from abusing the rights of citizens. This is an enviable reputation, but one that could be easily compromised by a few well-publicised incidents. The government's tendency to use the BDF in internal security roles thus holds some danger.

The current BDF commander, Lieutenant General Matshwenyego-Louis Fisher, has made a considerable effort to define the roles and missions of the force, and is overseeing a continuing expansion of its capabilities. However, Botswana's rather secretive processes of executive branch security decision-making has precluded the kind of healthy national debate (such as occurred in neighbouring South Africa in the late 1990s) that could make the public an engaged 'stakeholder' in establishing the structures and dimensions of national security. Security sector reform elsewhere in Africa has emphasised just such consultation and debate.

Despite the potential problems and dangers, Botswana deserves considerable credit for fielding a capable military with high standards of professional expertise and professional behaviour. The country has demonstrated consistency and perseverance in developing this public sector institution, and has avoided the mistake of attempting to construct a capability that it could not afford. The Botswana Defence Force is a credit to its country and has the potential to play very productive roles in the region as a whole.

Notes

1 The roots of the institution are found in the Bechuanaland Mounted Police founded by the British colonial administration at the outset of the Bechuanaland Protectorate in the mid-1880s. It evolved into a fairly conventional colonial constabulary as the Bechuanaland Border Police, then the Bechuanaland Protectorate Police, before becoming the Botswana Police Force at independence in 1966 and, ultimately, the Botswana Police Service.

2 This preference is well expressed in a Tswana proverb, *Ntwa kgolo ke ya molomo* ('the best way to resolve conflict is through the mouth' [for example through dialogue]).

3 See, for instance, Daron Acemoglu, Simon Johnson and James A Robinson, *An African success story: Botswana*, Unpublished text, 11 July 2001, available at <http://econ.www.mit.edu/faculty/download_pdf.php?id=610>; Kenneth Good, Interpreting the exceptionality of Botswana, *The Journal of Modern African Studies*, 30(1) March 1992, pp 69-95.

4 See, *inter alia*, Mpho G Molomo, Civil-military relations in Botswana's developmental state, *African Studies Quarterly*, online journal available at <www.web.africa.ufl.edu>; Lekoko Kenosi, The Botswana Defence Force and public trust: the military dilemma in a democracy, in R Williams, G Cawthra an D Abrahams (eds), *Ourselves to know*, Pretoria, Institute for Security Studies, 2003; Tendekani E Malebeswa, Civil control of the military in Botswana, in Williams, Cawthra and Abrahams (eds), *Ourselves to know.*

5 Richard Dale, The politics of national security in Botswana, 1900-1990, *Journal of Contemporary African Studies*, 12(1) 1993, pp 42-55; Kenosi, The Botswana Defence Force and public trust, p 190.

6 One was the Zimbabwe African National Liberation Army (ZANLA), the armed wing of the Zimbabwe African National Union (ZANU) political party, the other was the Zimbabwe Independent People's Revolutionary Army (ZIPRA), the armed wing of the Zimbabwe African People's Union (ZAPU).

7 H Ellert, *The Rhodesian Front War*, Gweru, Zimbabwe, Mambo Press, 1993, pp 114, 136.

8 Molomo, Civil-military relations, p 5.

9 The demand for additional security became part of the political party competition in Botswana when the opposition Botswana People's Party led by Philip Matante began to advocate the creation of an army. See Molomo, Civil-military relations, p 5.

10 BDF Act Chapter 21:05, 1977.

11 The Police Mobile Unit had received training from British Army instructors as early as 1967, a programme formalised in a bilateral agreement with the United Kingdom in 1968. Dale, The politics of national security in Botswana, p 44.

12 Merafhe had held the position of Deputy Police Commissioner since 1971. Botswana Defence Force briefing publication provided to the author by Brigadier E B Rakgole, BDF Assistant Chief of Staff Operations in March 2004/

13 Khama entered Sandhurst in 1972, the first citizen of Botswana to attend that institution. On his return to Botswana he was posted to the Police Mobile Unit. *Botswana Defence Force, 25th Anniversary Commemorative Brochure* (distributed by the Botswana Defence Force), Gaborone, Front Page Publications, 2002, pp 12-13.

14 Ibid.

15 The original air order of battle consisted of twelve BNG BN2A-21 Defender transport aircraft, supplemented in the mid-1980s with six BAC Strikemaster light attack jets. See <www4.janes.com/K2/doc>.

16 See, for instance, Michael Niemann, Diamonds are a state's best friend: Botswana's foreign policy in southern Africa, *Africa Today*, 1st Quarter 1993, pp 27-47.

17 Kenosi, The Botswana Defence Force, p 190; Molomo, Civil-military relations, p 5.

18 *Botswana Defence Force, 25th Anniversary Commemorative Brochure*, pp 21-23; Botswana DailyNews Online, 17 April 2000, <http://www.gov.bw/cgi-bin/news.cgi?d=20000417>;10 September 2002, <www.gov.bw/cgi-bin/news.cgi?d=20020910>.

19 A well-tended monument on the site of the ambush and an annual ceremony commemorate the BDF officers and men who died in this action.

20 Botswana Defence Force briefing publication provided to the author by Brigadier E B Rakgole, BDF Assistant Chief of Staff Operations, in March 2004.

21 For details, see <www.worldairforces.com/Countries/botswana/bot.html>.

22 The BDF is secretive about this relationship and the size of Indian military assistance contingent has never been publicly announced. Estimates range from several dozen to several hundred personnel.

23 Dale, The politics of national security in Botswana, pp 44-45; Kenosi, The Botswana Defence Force, pp 190-192.

24 See, *inter alia*, Richard Dale, Not always so placid a place, *African Affairs*, 86(342) January 1987, pp 73-74.

25 For a detailed analysis of this event, see Dale, Not always so placid a place, pp 73-91. See also Kenosi, The Botswana Defence Force, pp 191-192; Molomo, Civil-military relations, p 6.

26 This issue has arisen in a number of conversations between the author and informants in Botswana since 1992 and had at least the status of a powerful urban legend by the late 1980s.

27 See, *inter alia,* J Hanlon, *Apartheid's second front: South Africa's war against its neighbours*, London, Penguin, 1986; Helmoed-Roemer Heitman, *War in Angola*, Gibraltar, Ashanti Publishing, 1990;

and William Minter, *Apartheid's Contras: an inquiry into the roots of war in Angola and Mozambique*, Johannesburg, Witwatersrand University Press, 1994.

28 Author's interviews with Brigadier E B Rakgole, BDF Assistant Chief of Staff Operations, 4 March 2004; Lieutenant General Matshwenyego-Louis Fisher, BDF Commander, 4 March 2004; and Brigadier Otisitswe B Tiroyamodimo, BDF Assistant Chief of Staff Logistics, 8 March 2004. Tiroyamodimo was the commander of the Commando Squadron when the BDF initiated anti-poaching operations in 1987.

29 For details on the unsuccessful Zambian experience, see Clark Gibson, *Politicians and poachers: the political economy of wildlife policy in Africa*, New York, Cambridge University Press, 1999, pp 57, 59, 62. Botswana's commitment of its military to anti-poaching was almost certainly an initiative of Ian Khama, at the time the Deputy Defence Force Commander (and later, Commander). Author's interview with Dr Larry Patterson, wildlife biologist with extensive, long-term experience in Botswana, including work with Botswana Department and currently an independent wildlife consultant in Gaborone. Tiroyamodimo interview, 6 March 2004.

30 Interviews with Major Max Ngkapha and Major Mogorosi Baatweng, BDF Office of Public Relations and Protocol, June 2003, March 2004, June 2004.

31 As this is written in mid-2004, Merafhe serves in the Cabinet as Botswana's foreign minister.

32 Molomo speculates that the name of the base is derived from the Tswana proverb *goo-rra motho go thebephatshwa* ('the best security one can get is from his/her fatherland'), Civil-military relations, p 6.

33 Although rumours circulated throughout the region that the base was being built for use by the US military, Khama prohibited access to all foreign diplomats, including Americans. Personal experience of the author, US Army attaché accredited to Botswana from 1992 to 1994.

34 For detail, see Scott Thompson, South Africa and the 1988 Agreements, in O Kahn (ed), *Disengagement from Southwest Africa: the prospects for peace in Angola and Namibia*, New Brunswick, Maine, Transaction Publishers, 1991, pp 117-130.

35 Botswana's relatively vibrant economy and stability have been magnets to refugees and illegal immigrants from Namibia and Zimbabwe. See <www.iss.co.za/AF/profiles/Botswana/SecInfo.html>. Local cultural prejudices, particularly against Zimbabweans, complicate the relationships.

36 The island, called Kasikili by the Namibians and Sedudu in Botswana, is seasonally inundated and uninhabited. The Namibian motivation for occupying it seems to have had more to do with political competition in Namibia than any grand design to acquire territory. Based on author's discussion with US, Botswana and Namibian officials, 1992-1998.

37 The International Court of Justice awarded the island to Botswana in 1999. See <www.iss.co.za/AF/profiles/Botswana/SecInfo.html>.

38 The Caprivi dissidence had its roots in the Mafwe people of eastern Caprivi, led by Mishak Muyongo, a former member of Namibia's ruling SWAPO party, but expelled from the party for his secessionist inclinations. His followers claimed to be the Caprivi Liberation Army, a motley group of indeterminate size, probably numbering no more than several hundred combatants, whose most significant activity was a nuisance attack in August 1999 on the Namibian border town of Katima Mulilo, leaving twelve people dead. Muyongo himself fled Namibia for Botswana in 1998 and ultimately was granted asylum in Denmark. Between 1998 and 1999, several thousand Namibians associated with this dissidence fled to Botswana and were settled at the Dukwe camp, of whom about 1 200 remained in mid-2003. See 'Namibia: focus on repatriation fears of Caprivians', IRIN, 5 March 2003, and 'Namibia: focus on the Caprivi killings', IRIN, 13 November 2002, available at http://www.irinnews.org.

39 For a review of the relevant literature, see Walter S Clarke, *Humanitarian intervention in Somalia: bibliography*, Carlisle, Penn, US Army War College Center for Strategic Leadership, 1995.

40 Interview with Colonel Dan Pike, US Army, 15 September 2004. Pike was serving as the senior defence representative in the US Embassy in Gaborone at the time. He subsequently played a key role in preparing the Botswana Defence Force for deployment to Somalia.

41 As US Army attaché accredited to Botswana, the author visited the BDF contingent in Somalia in March 1993 some three months after their arrival, and interviewed their US marine counterparts at length. From the battalion commander to the individual rifleman, the marines consistently praised the performance of the BDF troops.

42 United Nations Operation Somalia, generally known by the acronym UNOSOM.

43 On several occasions, BDF Commander Ian Khama, a rated pilot, flew a BDF CASA transport aircraft to and from Somalia. On one of these occasions, in January 1993, he stopped in Harare to assure his Zimbabwean military counterparts of the value of the Somalia mission. (The Zimbabweans subsequently dispatched a reinforced company to Somalia.) From the experience of the author, resident in Harare at the time.

44 Tendekani E Malebeswa, 'Civil control of the military in Botswana', in Williams, Cawthra and Abrahams (eds), *Ourselves to know*, p 73.

45 Rakgole interview, 4 March 2004. For interesting insights on this UN mission, see Scott R Feil, *Preventing genocide: how the early use of force might have succeeded in Rwanda*, New York: Carnegie Commission on Preventing Deadly Conflict,

1998; Alan J Kuperman, *The limits of humanitarian intervention: genocide in Rwanda*, Washington, DC: Brookings Institution Press, 2001.

46 Rakgole interview, 4 March 2004.

47 United Nations Operation Mozambique, generally known by its acronym, UNOMOZ.

48 Based on author's personal experience during his assignment in southern Africa, 1992-1994. Based also on conversations at the time, *inter alia*, with US Army Lieutenant Colonel 'Blue' Keller, US Army attaché accredited to Mozambique, and US Army Colonel Dan Pike, senior US Defence representative in Botswana. See also Tendekani E Malebeswa, 'Civil control of the military in Botswana', p 73.

49 The operation was commanded by a South African military officer, the deputy commander was a colonel in the Botswana Defence Force. Rakgole interview, 4 March 2004.

50 For analysis of this intervention – and the political crisis that provoked it – see, *inter alia*, Theo Neethling, 'Military intervention in Lesotho: perspectives on Operation Boleas and beyond', *The Online Journal of Peace and Conflict Resolution*, Issue 2.2, May 1999, available at: <www.trinstitute.org/ojpcr/22_2neethling.htm>; and 'Combined Task Force Boleas', available at <www.mil.za/CSANDF/CJOps/Operations/General/Boleas/Boleas-1.htm>.

51 This was termed 'Operation Maluti'.

52 This consisted of two BDF brigadiers, a significant commitment. Rakgole interview, 4 March 2004. Botswana's involvement in Lesotho has an important cultural dimension. The Tswana and Sotho peoples share a common heritage and similar cultures. Their languages are closely related. These relationships presumably facilitate cooperation.

53 Fisher interview, 4 March 2004

54 Author's interviews of diplomats accredited to Gaborone, March 2004.

55 SADC is headquartered in Gaborone, and Botswana has always been a key SADC actor.

56 See, for instance, Jakkie Cilliers, *Building security in southern Africa*, ISS Monograph Number 43, Pretoria, Institute for Security Studies, November 1999.

57 The first, Blue Hungwe, was held in Zimbabwe in 1997 and the second, Blue Crane, in South Africa in 1999. Both exercises emphasised themes of collective military intervention to address a complex humanitarian emergency. See Lieutenant Colonel A W Tapfumaneyi, 'View on regional peacekeeping' Toward a SADC peacekeeping force', SARDC, 1999, available at <www.sardc.net/Editorial/sadctoday/v2-6-04-1999/v2-6-04-1999-10.htm>; and Mark Malan, Resolute partners, building peacekeeping capacity in southern Africa, Institute for Security Studies Monograph 21, February 1998, available at <www.iss.co.za/Pubs>.

58 The first, called *Kalola Matlho*, consists of joint military-police night patrols in the cities of Gaborone, Francistown, Selibe Phikwe and Molepolole to target armed robbery, murder, vandalism, drug trafficking and similar crimes. The second programme, called 'Provide Comfort', is conducted by Military Police and consists of random spot-checks of individuals and vehicles for fugitives, arms and illegal merchandise. Rakgole interview, 4 March 2004.

59 In 1993, 1995, 1996 and 2000.

60 In 1996, 1997 and 2001.

61 Several BDF officers observed to the author in interviews in March 2004 that these operations were appropriate because the BDF alone had the human and materiel resources for the roles. They also called attention to the BDF Act of 1977 that specified conditions under which the BDF could provide assistance to civil authorities.

62 Rakgole interview, 4 March 2004. See also <www.iss.co.za/AF/profiles/Botswana/SecInfo.html>.

63 This was a $50 million purchase of refurbished aircraft from Canada's Bristol Aerospace. See <http://mylima.com/airforce/b3.htm>. The F-5A is a multi-role combat aircraft, the three F-5D aircraft are trainers.

64 See <www.iss.co.za/AF/profiles/Botswana/SecInfo.html> and <stetmylima.com/airforce/b3.htm>.

65 Jane's Sentinel Security Assessment - Southern Africa, available at http://www4.janes.com/K2/doc.

66 The Germans claimed that they did not want to promote regional tensions, though protests from Namibia (with its historical ties to Germany) probably played a key role in the German decision. See <www4.janes.com/K2/doc>.

67 See <www.gov.bw> for details.

68 Fisher interview, 4 March 2004. Developing a national military strategy in Botswana was no simple process. In the absence of a national security strategy, Fisher was obliged to consult with a wide range of policymakers and study a large number of policy documents. Interestingly, he also consulted the leaders and policy documents of opposition parties in his efforts to define BDF roles and missions.

69 It would, of course, be misleading to attribute all of this to Fisher. Much of the force improvement was under way when he assumed the position of commander.

70 Fisher interview, 4 March 2004.

71 Brigade is responsible for most of the southern part of the country, including most of the border with South Africa; 2 Brigade is responsible for the eastern part of the country, including the entire border with Zimbabwe; 3 Brigade is responsible for the western part of the country, including most of the border with Namibia.

72 Rakgole interview, 4 March 2004.

73 Among its other assets are Casa 212-300 transports, AS 350BA utility helicopters, PC-7 trainers and 0-2A Skymasters. See <www4.janes.com/K2/doc> for details.

74 Botswana military expenditure drawn from the SIPRI military expenditure database, provided in a private communication, 4 November 2004.
75 The founding commander, Mompati Merafhe, himself a deputy police commissioner when charged with overseeing the formation of a new army, seems to have concluded from the outset in 1977 that indiscipline was a principal defect in other regional militaries. His administration – and legacy to the BDF – was marked by an emphasis on professional standards of behaviour. See *Botswana Defence Force, 25th Anniversary Commemorative Brochure* , pp 7-9.
76 It recruits by advertising for candidates in advance of a yearly 'intake' – one each for officer and enlisted candidates. In 2004 the BDF sought 80-100 new officers and received some 3 000 applications. It sought 500 enlisted recruits and received over 15 000 applications for these positions. This level of recruitment and popular response has been consistent over the past decade. Author's interview with Lieutenant Colonel P T F Sharp, Botswana Defence Force Director of Career Development and Training, 17 June 2004.
77 Ibid. The minimum educational qualification for an officer candidate is a Cambridge A-level 'first class pass'. This itself is impressive but does not tell the whole story: over the past decade, about half of the officer candidates selected for BDF service have had university degrees. Enlisted recruits must at a minimum possess a Cambridge O-level certification. Many of the successful enlisted applicants have additional trade school or apprenticeship training as well.
78 Ibid. Multiple interviews with Major Max Ngkapha, Director of Public Relations and Protocol, Botswana Defence Force, March 2004.
79 Estimate provided by Major Andrew Oldenfield, Chief of the Office of Defence Cooperation in the US Embassy in Gaborone, 14 June 2004.
80 The others are the national police and the prison services.
81 For 2004 budget detail, see B Gaolathe, Republic of Botswana Budget Speech, 2004, delivered to the National Assembly on 9 February 2004, paragraph 80, available at <www.finance.gov.bw>.
82 Herb Howe, *Ambiguous order: military forces in African states*, Boulder, Colo, Lynne Rienner, 2001, pp 43-44.
83 Significantly, Transparency International has consistently rated Botswana the least corrupt country in Africa.
84 Kenneth Good, Authoritarian liberalism: a defining characteristic of Botswana, *Journal of Contemporary African Studies*, 14(1) 1996, pp 29-48. See also J Zaffiro, The press and political opposition in an African democracy, *Journal of Commonwealth and Comparative Politics*, XVII(1) 1989.
85 BDF Act Chapter 21:05, 1977.
86 Interview with Professor Kenneth Good, University of Botswana, 18 June 2004; see also Molomo, Civil-military relations, pp 12-13.
87 Members of Parliament displayed unprecedented concern in 1998 when they complained they had not been not consulted in the government decision to intervene in Lesotho as part of a regional peace operation, but the executive branch gave no indication at the time that it intended in the future to conduct such consultation. Author's interview with Dr Judy Butterman, US Embassy Gaborone, 6 March 2004 and 12 June 2004; author's interview with Dr Ian Taylor, University of Botswana, 5 March 2004; Good interview, 18 June 2004; see also Malebeswa, Civil control of the military in Botswana, p 73.
88 See, *inter alia*, Good, Authoritarian liberalism, pp 29-33.
89 Good, Authoritarian liberalism, pp 36-37; see also *Mmegi*, 17 January 92, 4 September 92 and 8 November 91 for related examples in agencies other than Defence.
90 Malebeswa, Civil control of the military in Botswana, pp 68-71; Molomo, Civil-military relations, p 12.
91 Ibid.
92 In 2004 these consisted of the first BDF commander, Mompati Merafhe (now foreign minister), the second commander, Ian Khama (now vice-president) and the incumbent, Lieutenant General L M Fisher.
93 Both Sir Seretse and his eldest son, Ian, inherited the office of *kgosi* (paramount chief) of the BamaNgwato, the largest Tswana subgroup in the country. For details about Sir Seretse's political role, see Jeffrey Ramsay and Neil Parsons, 'The emergence of political parties in Botswana', in W Edge and M Lekorwe (eds), *Botswana: politics and society*, Pretoria, Van Schaik, 1998.
94 In 2003 he even publicly admonished his (no doubt shocked) fellow parliamentarians to put aside self-aggrandizement and seek only the public interest in selfless service. Butterman interview, 6 March 2004 and 12 June 2004; Taylor interview, 5 March 2004; Good interview, 18 June 2004.
95 Even Botswana's senior police officials acknowledge this reputation. See Norman S Moleboge (Commissioner of Botswana Police), 'Public sector reforms, challenges and opportunities: the case of Botswana Police Service' a paper presented to the Commonwealth Advance Seminar, Wellington, NZ, 24 February - 8 March 2003, p 2. Police in Africa typically are less respected than the military. Police establishments typically are significantly underfunded in comparison to military establishments. See Alice Hills, *Policing Africa: internal security and the limits of liberalization*, Boulder, Colo, Lynne Rienner, 2000, pp 3-4. For Botswana's example, in 2004 the 12 000-man BDF was provided a development budget of P391 million (US$83 million) compared to the 20 000-person Botswana Police with a budget of P120 million (US$25,5 million). B Gaolathe, Republic of Botswana Budget Speech, 2004, delivered to

the National Assembly on 9 February 2004, paragraph 80, available at <www.finance.gov.bw> .

96 Kenosi, The Botswana Defence Force, pp 200-201, expresses some concern for the broadened missions, urging limits and more consultation but does not overtly challenge their propriety.

97 Otisitswe B Tiroyamodimo, Why is security a contested concept? *Sethamo* (Botswana Defence Force Newsletter), 37, December 2001, pp 9-11.

98 The author has encountered no evidence that factionalism has compromised the capabilities or performance of the Defence Force, or that any significant group of BDF officers is politically disaffected.

99 See, for instance, Titus Mbuya, The BDP split shakes army, *Mmegi*, 29 July 1994

100 Molomo, Civil-military relations, pp 12-13.

ESSAY

RETHINKING CONFLICT TRAJECTORIES

South Africa and Kenya revisited

KISIANGANI EMMANUEL N

South Africa and Kenya experienced various forms of conflict and gross human rights abuse between 1948-1994 and 1963-2002 respectively. In both situations, the conflicts were motivated by various factors; these included unequal distribution of socio-economic resources and skewed political relationships. The centrality of human rights abuse and political violence to both situations places similar issues on the agenda for analysis. In both cases opposition to regimes was justified on the basis that the political systems were constructed in such a way that limited alternative conceptions and prevented democratic freedom (until 1992[1] in Kenya and 1994 in South Africa). After undergoing transition to democratic rule in 1994, South Africa engaged the idea of a truth and reconciliation commission as an instrument for dealing with its past conflicts. The South African case animated widespread international interest and after an electoral victory in 2002, the National Rainbow Coalition (NARC) government in Kenya mooted the same idea. By the end of 2004 however the NARC government seems to have lost interest in the truth commission concept; this paper probes the question why? Broadly there is room for alternative interpretations both within and between the two cases on how conflicts were perpetuated and the potency of a truth and reconciliation commission as a viable alternative for dealing with past conflicts. This paper broadly aims to offer a clearer account of conflicts and mechanisms for dealing with them from the conceptual lenses of conflict management theory.

Introduction

South Africa and Kenya celebrated political transitions in 1994 and 2002 respectively. In both cases the new governments were seen as significant breakthroughs in the realm of democracy because their predecessors had imposed widespread structural violence and appallingly heavy burdens on the majority of their populations. Indeed, it is conceivable to deconstruct causal assumptions between socio-economic and political aspects and the nature of conflicts in both countries. The endemic political violence to which both situations were subjected is a common thread. Before opening up to multiparty politics, regimes in the two countries defined political opposition as subversion and engaged their opponents in intractable political ground rules that invited various forms of violence. Alternative conceptions to the political establisment were denied the political space through repressive laws and partisan security.

The patterns and dynamics of violence and injustices were not always similar. In South

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Africa the social life of the majority of the population was disrupted and this made the situation much more critical in terms of agency and victimhood compared to Kenya. A crucial dimension in Kenyan conflicts was the aspect of economic injustice. The country witnessed economic mismanagement and mega-corruption that stemmed from government misuse of its institutions and political power. Added to this were the repressive legislation and systematic violations of individual rights that provided the broad basis of structural violence to Kenyan society.

This paper aims to do two things: first, to draw a trajectory of the nature and character of the conflictual behaviour of the two societies prior to their various transitions; and second, to reconceptualise mechanisms for dealing with intra-state conflicts. It resists the familiar notion that conflict is always synonymous with manifest violence.

The conflicts in South Africa and Kenya

South Africa and Kenya have both experienced widespread conflicts in their histories. During [the periods 1960–1994 (for South Africa) and 1963–2002 (for Kenya)] periods repressive rules and authoritarian systems evolved and sank the two countries into pervasive structural conflicts. An important reason for the intractable nature of South Africa's conflicts was the manipulation of territory and populations by well-organised minorities. By means of partition and racial classification South Africa was constituted into majorities and minorities, and through a combination of force and ethnic solidarity the majorities fought the minority government in the name of exercising the right of self-determination.[1]Armed struggle against the apartheid regime was justified because the political system was constructed in a way that limited democratic space through repressive laws and partisan security forces. When the National Party came to power in 1948, it had the aim of suppressing the emergent black opposition, which threatened the continuation of white domination. The interests of the white working class were to be met by reversing the growing migration and permanent settlement of black workers in urban areas. On that basis the regime began to implement draconian measures, which were largely a reformulation and elaboration of previous policies. From that point South Africa was set on a path of intractable conflict and violence whose effects transcended the democratic transition of 1994 and are still being felt today.

Kenya, on the other hand, attained its 'independence' from Britain in 1963 and has, in sweeping terms, generally avoided overt armed conflict as compared to neighbours such as Somalia, Ethiopia, Uganda and Sudan. The intervening decades after Kenya's independence, however, pointed to a deepening sense of economic and political dilemma. It led to the looting and squandering of the country's resources and the virtual silencing of its people.[2] The Kenyatta and Moi regimes both created government structures that denied citizens their basic democratic rights and kept them perpetually subordinate. Kenyatta, a charismatic leader, commanded broad respect and loyalty at the time of independence. By December 1964 signs of disenchantment had started to manifest themselves as the ruling party, the Kenya African National Union (KANU), began to suffer from internal divisions and then were revealed more quickly as Kenyatta succumbed to authoritarian rule. Determined to be the boss, Kenyatta could not tolerate political rivalry, and politicians in the country competed with one another to sing praises to the president with a view to attracting his favour. The mid-1960s saw the Kenyatta government institute various constitutional amendments. For example, parliament was relieved of any involvement in issues of national elections and presidential verdicts and any other say over Kenyatta's conduct and use of power. As the terrain for political debate was progressively restricted, it became increasingly difficult to publicly register dissent. Government critics used parliament as a platform for public debate to publicise major political issues. At the heart of these political differences were questions of political power and the distribution of national resources.

Kenyatta allowed himself and his close friends to accumulate power, land and wealth, and Kenya became a country marked by stark contrasts between the majority, who were poor, and a few extremely rich individuals.

During Kenyatta's rule public figures such as Pio Gama Pinto, Tom Mboya and J M Kariuki were mysteriously assassinated and many others were detained without trial. This trend continued after Moi took over power in 1978. His administration coincided with an economic slowdown following the imposition of structural adjustment programmes at the behest of the World Bank and the International Monetary Fund in 1980. Economic difficulties increased, setting off protests by students and strikes by workers. In August 1982 Kenyan Air Force officers attempted a coup d'état against Moi, accusing his government of corruption and tyranny. The failure of the coup was followed by a crackdown on real and imagined dissidents. The subsequent period was a tense political chapter in Kenya as widespread protests and arrests showed signs of a far deeper discontent. Tainted by corruption, human rights violations and a sluggish economy, Kenya's image as a model for the region was tarnished. The murder of Foreign Affairs Minister Dr Robert Ouko in February 1992 unleashed pentup feelings against the political establishment.

Broadly, the authoritarian systems of Kenyatta and Moi were constructed in a way that encouraged personal rule and precluded democratic competition and accountability. Political space was denied to alternative political conceptions through repressive laws and authoritarian leadership. As ideological expression was stifled, politics increasingly became personalised and tribalised. The oppressive socio-economic and political structures denied people their aspirations and perpetuated frustrations and latent but insidious violence. A society in which basic needs are out of reach of its majority becomes frustrated; frustration normally leads to resentment and, as happened in Kenya, manifests itself in societal disturbances such as political demonstrations and disturbances. Conflict originates and feeds on this frustration and over time can escalate into intractable physical violence.

Questions have been raised over whether South Africa in the apartheid era was a plural or an identical society. Adam and Moodley consider that South Africa was not a genuinely plural society, because by the 1980s little cultural distance separated the urbanised population groups.[3] However, Lisphart disagrees and argues that ethnicity continued to be a strong factor in many facets of the South African society.[4] Mathews gives two main reasons for South Africa being prone to violence. First, South Africa was a deeply divided society characterised by significant racial, religious, ethnic and linguistic divisions.[5] He argues that such societies are notorious for their political instability and contends that, unlike dissatisfied individuals who do not share identity, groups with a specific identity and a common set of grievances can mobilise support by appealing to those who identify with them culturally and racially. Second, South Africa was susceptible to instability because of its modernisation process. Mathews describes the essential features of that process as rapid economic growth and the absorption of traditional patterns of life by urbanisation and by the large jumps in literacy, education and media exposure. This kind of modernisation heightened the potential for disruption and violence in a deeply divided society, since many of the people who relocated to the more developed urban areas experienced a new awareness of improved forms of life. They became aware of their relative deprivation. Traditional values, family and social institutions were disrupted and lost their binding influence.

Broadly, it is difficult to attribute the origin and subsequent development of conflict and violence in South Africa to a single reason. Many elements were decisive in the starting and escalation of the conflicts. In most group conflicts, leadership is critical in the polarisation and escalation of that conflict. Group members must be convinced that their grievances can be attributed to the perceived adversary. The element of leadership is important because it played a critical role in the manipulation of the legal system and eventually polarised the various groups in South Africa. This paper contends that South African socie-

ty was prone to violence and confrontation because of racial and ethnic polarisations that combined with deepening socio-economic and political conditions that exacerbated over time to make the conflict much more violent and intricate.

Conflict and violence: comparing cases

A comparative trajectory shows that South Africa and Kenya experienced various forms of conflict and violence between 1948 and 1994 and 1963 and 2002 respectively. The terms 'conflict' and 'violence' are often used synonymously and the distinction between the two should be discussed briefly. Conflict arises where there are incompatible goals or issues, while violence refers to the actual damage or violation caused to a person's character, feelings, rights, property or interests. There are various forms of violence, for example overt violence, which is physically manifest and easily recognised, and the latent form of violence that is indirect and less dramatic but quite insidious. People may be denied their rights without immediately realising the upshot of the damage to their lives. If a conflict is seriously deep and is not prevented from escalating, it may enter a phase of overt violence.[6] This distinction is important because it helps to delineate the various forms of conflict and violence that permeated the two cases under discussion.

Conflicts are a phenomenon of human relationships and are evident in all societies. South Africa and Kenya suffered from structural or indirect violence. While South Africa experienced widespread volatile manifest conflict, Kenya had only occasional similar incidences. In most cases of physical violence, the underlying causes of the confrontation are often in place long before the outbreak of violence. An escalation of violence, particularly in South Africa, was often preceded by a perceived incompatibility of socio-economic and political interests between groups, asymmetric inter-group power relationships, and triggers that served to mobilise or rally a group around its grievances.[7] Conflicts often continue even when the issues that initially gave rise to them have been forgotten or become irrelevant. That is why it is possible to contest the often-used term 'post conflict' because it gives the impression that it is possible to stop a conflict in its various manifestations at once. In fact, efforts aimed at de-escalating a conflict or settling it are not sufficient to eliminate it. A conflict normally has a formation of many parties, each with a stake and clashing goals, incompatibilities, disharmonies, each crying for some management or resolution.[8] To move the society toward a path of peaceful coexistence, there is a need for activities aimed at social transformation and reconstruction and that address the underlying causes of a conflict and prevent it from re-erupting.

In Kenya the dominant form of violence was structural, typically built into the structure of social, cultural and economic institutions. There were cases of manifest violence, however. For instance, political confrontations and ethnic clashes resulted in many deaths. A society commits violence against its members when it forcibly stunts their development and undermines their well-being.[9] It is possible that victims in society do not realise that the structure of their relationship is generating conflict. A possible basis for structural conflicts arises when individuals are restricted from achieving their full potential.[10] This form of violence permeated Kenyan society during the Kenyatta and Moi regimes. It worked slowly to erode humanistic values and impoverished human lives. South Africa, on other hand, experienced structural and overt forms of violence on a large scale.

South Africa and Kenya: conceptual problems

Kenya did not experience a pronounced system of racial segregation and therefore its case invites limited conceptual appeal on the question of race. In South Africa, however, the evolution of apartheid emerges as a complex conceptual problem. Various conceptual obstacles have tended to impede a clear analysis of South Africa's conflicts during the apartheid era. Often the conflicts are reduced to a question of class or of race, in the sense

that South Africa's social order is assumed to be explicable by one of these phenomena operating in isolation.

Rethinking apartheid

Apartheid in South Africa emerged at the levels of ideology and state policy (the racial allocation by the state of political, social and economic roles). Ashforth states that apartheid was pre-eminently a racist system of controls on movement and residence framed in a state ideology, which interpreted political and social rights in terms of nationalist principles relating to people and places.[11] In terms of the social structure, racial tensions in South Africa were closely related to ethnicity and were significant in exacerbating the conflicts. Attitudes between social groups with different physical characteristics created prejudice. Prejudice resulted from learning and this learning was closely related to the attitudes of similar ethnic or religious groups towards an antigroup or outgroup. It created a process of channelling hostility against a definite target and contributed to specific intensity or hostility. In South Africa there was the development of symbolism and prejudice against 'a symbolic colour', which continuously enforced the prejudice (black has everything negative and white is positive and vice versa).[12]

Halisi states that the major fault lines in the South African society were not racial divisions, but class divisions that were reinforced by racially inclusive legislation and administrative fiat.[13] He argues that racial proletarianisation meant an intersection of race, class and power relations into a political culture that shaped social conflicts and cooperation. Harold Wolpe argues that it is not sufficient to say South Africa was a racist society.[14] He observes that race, although of central importance, operated in specific ways and did not eliminate class formation. It was the class formation articulated with racial divisions and with deliberately fostered ethnic rivalries that resulted in intense violence and confrontations. Indeed, the situation was highly complex and though class-consciousness was not automatic, competition among classes and groups played an increasingly important role in heightening tensions in South Africa.

Logically, it may not be right to account for the conflicts in South Africa by reducing them to class or race. The evolution of apartheid in South Africa poses significant questions related to the relationship between class, race,[15] the capitalist economy and white domination. This paper argues that class, race, the capitalist economy and white domination stood in a contingent relationship to one another. In consequence it is possible to divide the sources of conflicts in the apartheid era into various categories – structural, class, political and social – all of which were intertwined. Economic tensions often intensified social and political tensions and vice versa.

For Kenya most of the literature on the various forms of violence and gross human rights abuses has been presented as sensational commentaries. Most of the accounts were presented by the media and in other forms of literature as occasional disturbances. There was little attempt, if any, to look for explanations and causes in order to place the various forms of gross human rights abuses and political violence within their historical and socio-economic links. The overwhelming priority given in the examination of the conflicts and violence to descriptive accounts with little attention paid to the structural conditions of such conflicts fails to capture the causal sequences and complexities of conflicts. As a result, significant questions about the character and trajectory of those conflicts cannot be posed or investigated. Literature suffering from these obstacles cannot properly capture and appreciate the significant and intricate nature of conflicts and violence. It ultimately suffers in terms of diagnosis of the causes of the conflicts and cannot prescribe correct or adequate mechanisms for conflict management and peace building.

The structural dimension of conflict

In terms of South African society, Herbert Adam observes that in the early 1970s South Africa displayed the classical Marxist prerequisite of a pre-revolutionary situation, an

extreme gap between advanced forces of production and obstructive modes held together by the chains of an outdated political super structure.[16] Peter Randall argues that the overall structure of South African society constituted by the various cleavages was mutually reinforcing in generating conflict.[17] Indeed the social-economic and political boundaries between the various groups, racial and otherwise, affected each other to the extent that conflicts arising at one level or in one sphere over specific issues were rapidly generalised to other areas so that there was likely to be intense group conflict and forceful regulation of group relationships. For instance, agitation for political changes by Black Nationalist movements easily fed such issues as blacks workers' rights.

The structural phenomenon of superimposition, that is, the convergence of lines of group conflict, had such grave political consequences.[18] It was because of racial cleavages largely coinciding with the lines of economic exploitation, political domination and social stratification that the society assumed such explosive significance. Broadly, structures that generate conflict in society can interact in various forms: economic, social, psychological, religious and legal. This is important because conflicts are intricate and dynamic phenomena and do not lend themselves to definition in single parameters. In Blalock's words, conflicts are ubiquitous and come in many forms and involve vastly different kinds of parties.[19] In both South Africa and Kenya the stakes in the conflicts and violence escalated over time, incorporating tangible and intangible issues that cannot be ascribed to one social sphere.

Conflict management and peace building

It is also important to distinguish between root causes and triggers of conflict. Root causes refer to the underlying fundamental incompatibilities of a conflict, whereas triggers constitute more proximate events or factors that cause a conflict to escalate. In South Africa and Kenya the pathological conditions of violence and human rights abuses were widely seen to have common roots in discriminatory and unequal socio-economic and political relationships. Triggers, on the other hand, related to day-to-day events such as political speeches and police arrests. In South Africa as well as Kenya, ethnic and identity affiliations have often been blamed for prompting the structural and overt forms of violence. However, even in cases linked to such occurrences, they cannot solely explain the advent of conflict and violence. Identity affiliations may have played a critical role in the conflictual behaviour. They may have acted as a unifying force and trigger mechanism, but certainly the underlying incompatibilities also intermarried with socio-economic and political factors. This understanding can make a useful contribution to dealing with sources and dynamics of conflict, as well as to coordinating efforts aimed at stability and peace in society. For preventive action, triggers must be identified and tackled effectively. To create sustainable peace and a long-term solution to a conflict, the root causes must be addressed and eradicated.

An overwhelming priority given to descriptive accounts of conflicts and violence in South Africa and Kenya produces relatively little guidance about the complex nature of conflicts and mechanisms for resolving them. Protracted social conflicts are generally not single-issue situations.[20] As in South Africa and Kenya, they inherit a past that acts as a heavy burden on the future.The conflicts involved questions of identity, symbolic meaning, control over resources and a sense of meaningful security. In dealing with such conflicts attention should be paid to addressing the underlying causes and transforming and reconciling the conflictual behaviour. Rupesinghe observes that those involved in such processes should seek to create a framework that includes changing the terms of the conflict and the constituency of that conflict (a process he calls non-violent social transformation).[21] Changing terms can be useful if it involves addressing the socio-economic and political factors informing the conflicts and undoing the effects of the conflict on society.

The conflicts in South Africa and Kenya in

some measure involved dominated groups trying to liberate themselves from oppressive systems, while dominant groups attempted to maintain the status quo. Such conflicts are normally characterised by inequalities in the distribution of power and resources. Various approaches have been advanced to deal with conflicts of this nature. Reychler has outlined two such strategies.[22] The first associates mechanisms for dealing with conflict with structural transformation. This is the Marxist school prominently articulated by Karel.[23] According to Reychler, marxists take the proletariat of the world as their main objects. He states that Marxists do not see violence as a priori negative, but they recognise the justification of the use of violence if it is relevant to historical progress. The liberation movements in South Africa and opposition movements in Kenya could also fall into the Marxist school. At various points they resorted to violence as a means of changing oppressive structures and fairness, and justified the approach as being necessary.

The second approach identified by Reychler is the world order model, as articulated by Mendlovitz.[24] This model holds that peace cannot be realised unless improvements are made with respect to poverty, social justice, ecological instability and alienation or identity crises. These views closely relate to those of Burton, who emphasised the contribution of human needs to the discourse of conflict management and peace building.[25] According to Burton it is the nature of human beings to be driven by basic needs such as identity, development and security. He observes that, in the end, human beings refuse to compromise the fulfilment of these needs, thereby leading to universal decay in authoritative processes unable to satisfy them. Burton singles out identity as a basic human need that cannot be frustrated in its drive for fulfilment without serious consequences. In the two case studies under investigation, the frustration of basic needs was certainly at the heart of their conflicts.

Conflict management approaches such as negotiation and bargaining are appropriate in dealing with aspects of conflicts relating to interests. Aspects such as power sharing are amenable to such negotiation and bargaining processes, since they involve dealing with interests. But deep-rooted conflicts caused by the frustration of irrepressible drives such as the desire to live, the need for food, and identity crises may not be exclusively determined by such approaches because these are issues bordering on human dignity and are generally treated by human beings as matters of life and death. It is appropriate that responses to such conflicts connect into the review of institutional and normative environments accordingly and making them more responsive to the problem of human needs. Apart from the spectrum of human needs, Van der Merwe and Odendaal point to the need for these approaches to be indigenous.[26] They argue that the process of conflict management must adequately appreciate the behaviour of contending parties as determined by their various histories and cultures. Van der Merwe and Odendaal were writing in the context of negotiations toward the first multiparty elections in South Africa and observed that the process had to contribute to resolving conflicts in such a way that it involved people at grassroots level in building the new South Africa.

Frei takes up the discussion on the interaction between conflict and history and states that conflict is one of the many forms and phases of the development of a specific history.[27] Conflict is objectively determined by historical and socio-political conditions of the epoch and of the particular period within that epoch. The conflict itself may have deeper and more distant historical roots, which may also be much more diversified. Conflicts, particularly those with an intra-state character, reveal the influence of subjective factors and peculiar and unique features, and approaches to dealing with them should not be considered only along predetermined lines. Conflicts are dynamic, they have a life of their own, and one must resist the temptation of introducing mechanisms and institutions appropriate to one experience to another context. Instead, such mechanisms may be fashioned so that they are relevant to the new situation. This underlines an important factor in the practice of conflict management and

peace building: the need for innovation. In order to break historical cycles in conflict situations, the role of victimhood must be deal with. Montville has observed that the collective historical memory of victimisation continues to create aggressive behaviour unless a mourning process has been completed, which requires that victimizers accept responsibility for their acts or those of their predecessor governments and in some way ask for forgiveness from victims while allowing victims to recognise the injustice.[28] This points to the idea of truth and reconciliation as an urgent field for inquiry. (This debate will be taken up in subsequent paragraphs.)

Saunders and Slim discuss the question of relationship as a basis for conflict and its long-term solution.[29] They state that where there has been protracted conflict, the focal point for conflict management should be a sustained dialogue that seeks to build mechanisms that engage the conflicting sides with one another as 'human in relationship'. To them, sustained dialogue has positive contributions because it augments the view that legitimised relationships in conflict situations can be facilitated by addressing the question of relationships that build reconciliation. Conflict management and peace-building strategies should seek to address the underlying causes of conflicts and violence to ensure that they do not recur. Conflicts begin and continue when the important interests or needs of one or more parties are frustrated, threatened or remain unfulfilled. Appropriate conflict management and peace-building techniques should involve efforts aimed at social, political and economic reconstruction, observance of fundamental human rights and elimination of discriminative systems.[30] An examination of political violence must analyse two interrelated sets of factors:[31] first, the underlying causes that give rise to potential for disorder, such as an overwhelming perception of racial disadvantage, discrimination or environmental decay; and second, trigger events, which may not be directly related to the underlying causes.

It is important to place the conflicts in South Africa and Kenya within the social context in order to explain how they became institutionalised. At times the governments deliberately violated legal frameworks inscribed in the constitutions or codified new rules and structures in the legal framework in order to coercively preserve the status quo. The repressive tendency corresponded to the structural necessity to intimidate the victims of injustice and unequally distributed wealth. The persistence and aggravation of inequalities subjected citizens to more structural violence. It is therefore plausible to argue that while tangible issues such as human rights violations underpinned the conflicts in South Africa and Kenya, structural realities, socio-economic and political, formed a very important dimension. These structures were reinforced by legal measures and inhibited the development of the dominated groups and consequently led to latent and manifest violence. The South African and Kenyan governments sought to manage the resultant conflicts through coercion and brute force, which did not succeed in bringing peace. It only polarised and separated people without addressing the real causes of the conflicts.

In managing structural violence and conflicts the focus should be on improving people's lives with respect to social justice, poverty, alienation or identity crisis and ecological instability. The goal should be to transform the phenomenon of conflict lodged in human relationships to ordering structures of human community. This calls for a reconstruction of the social organisation and realities. If the basis of conflict is the denial of particular needs, then the resolution process must identify those needs and include ways of answering them. Peter Wallestein observes that resolving conflicts requires decentralised structures and ways in which psychological, economic and relational needs can be satisfied.[32] 'Post-conflict' (for lack of a better term) social reconstruction may involve a broad range of short- and long-term political, institutional and developmental activities that are directed at ameliorating the root causes of the conflict. It encompasses reconstruction and developmental efforts that are carried out to specifically prevent recurrence of the conflict. Cousens and Kumar observe that peace-building efforts

should focus on those factors that allow stable political processes to emerge and flourish.[33]

Conflict settlement processes

Negotiations in South Africa played a significant role in moving the country toward a peace accord and democratic elections. Indeed, reforms to the apartheid system began more than a decade before the 1994 elections. In the early 1980s there was increasing international pressure for sanctions against South Africa. As a consequence, the apartheid regime held negotiations with African nationalists (including Nelson Mandela in prison) but balked at the idea of allowing Africans to participate in the political system. There were various constraints to the negotiations that took place. These included the threatening intergroup perception to the degree that the various racial groups and their sympathisers viewed each other as being determined to preserve or alter the basic rule of relationships among sectional interests to their decided advantage, or perceived their rival in menacing terms.[34] Each group saw its survival – culturally, socially, politically and economically – as being threatened to the core, and the elites and their constituents therefore responded defensively. The ANC, for example, was viewed by the apartheid regime not as a liberation movement, but as a terrorist organisation intent on destroying the white-run state. The ANC and other political organisations on their part saw themselves as liberators and the apartheid regime as an enemy who had destroyed their livelihood. Such perceptions fed on themselves, leading to a negative reciprocity expressed in terms of fearful and aggressive behaviour.

Another barrier to negations related to divergence on the core issues of concern. These consisted not only of questions of interests but also of matters of basic values and belief. What was perceived to be at stake in the South African conflict was not distributive interests that are negotiable, but matters of principle. For the dominant whites, issues such as the maintenance of group rights, separate schools and racially distinct residential areas had developed to a point where they entailed basic values on which whites did not wish to compromise. For African nationalists, majority rule the complete ending of white minority power and privilege, and individual rights were principles over which no accommodation seemed possible.

Third, the high-powered disparity in favour of white minority interests gave them a distinct edge in power relations. So long as racial relations reflected this striking power imbalance, the dominant minority had little incentive for concessions, while the majority were unable to make effective claims upon the state. Again the perception of victory made many Africans reject the likelihood of compromise on issues they regarded as critical. Compromise offered little incentive to alter existing structures of relations in fundamental ways. The remaining alternative, for all its apparent costs, was a protracted struggle.

Rene Lemarchard contends that South Africa was one of the most extraordinary political transformations of the 20th century where people defied the logic of their past and broke all rules of social theory to forge a powerful spirit of unity from a shattered nation.[35] He maintains that on the eve of its transition South Africa was 'a ranked' society in that it had a vertical pattern of stratification in which the politically dominant group controlled access to health, education and status. South Africa therefore opted for a transitional formula that brought incumbents and opponents to the negotiating table, in what Samuel Huntington calls a transplacement (a democratisation process that is produced by the combined actions of the ruling regime and resistance groups, with the latter willing to negotiate a change of regime but unwilling to initiate it; it thus needs to be pushed into a negotiated settlement through internal or external forces).[36] South Africa saw power sharing as a more promising method for managing intergroup conflicts.

Unlike South Africa, Kenya's widely acclaimed 2002 transition arose purely from an election contest. The democratic transition that followed the 2002 general elections in Kenya prompted lessons and comparisons

with the much more ramified processes of negotiation and reconciliation process that took place in South Africa. Both situations had shown signs of emerging from various forms of violence and gross human rights abuses. South Africa had experienced pronounced and protracted conflict when compared to Kenya. In both cases internal and external pressures contributed to moving the two countries toward their transitions to democratic rule. South Africa faced international economic sanctions, while Kenya had been subjected to 'reform' conditionalities by the Bretton Woods Institutions. The question of economic injustice evolving from mega-corruption in government institutions was more explicit in Kenya than in South Africa. Such things mean that the needs and mechanisms for peace building and social reconstruction should be understood and pursued in ways relevant to the two contexts.

In most intra-state conflicts, often inefficient, unfair and discriminatory policies play a role in alienating the loyalty of the people and thereby dividing the society along economic, ethnic, religious or regional lines. In dealing with such conflicts, the underlying causes must be addressed in a way that supports relational collaboration at all levels of society. Addressing these problems requires ongoing institutional capacity to see them through. Short-term efforts engineered by the international community may be beneficial, but the metamorphosis required in the process is most effective when it comes from or is built into the established foundations of the society.

Truth and reconciliation

The concept of truth and reconciliation as an instrument for peace building has stirred widespread international interest in the recent past. Several countries, including Argentina, Chile, El Salvador, Peru, Ghana, Uganda, Sierra Leone, South Africa, Guatemala, Rwanda and Kenya, have adopted or at least attempted to take up diverse forms of truth and reconciliation commissions to galvanise the process of transition from a past of human rights violations and violence to a future that is supposed to be guided by democratic ideals, the rule of law and peaceful coexistence.

South Africa's Truth and Reconciliation Commission (TRC) greatly enhanced the truth commission agenda in Kenya and many other countries worldwide. The uniqueness of the truth commission in South Africa was because of the prominence and appeal of two of its leading players, Nelson Mandela and Archbishop Desmond Tutu and in part owing to the commission's proceedings, which were held in public. The TRC had a huge mandate, including the amnesty provision whose conditionality and specificity were not only ground breaking, but sometimes very controversial, particularly when it came to the thorny questions of how justice was to be pursued.[37]

In Kenya, on the other hand, the work of transitional justice has not been so visible. Expectations were high after the widely praised democratic elections in 2002 that resulted in the defeat of the former ruling party KANU. KANU had been in power for 39 years and its rule had been characterised by human rights violations and massive corruption. The National Rainbow Coalition (NARC) government had campaigned on the platform of anti-corruption and the promise to establish a comprehensive truth commission or similar body to facilitate accountability for past economic crimes and violations of human rights. After taking over power, the NARC government appointed a task force in April 2003 to collect views on the need for and structure of a truth commission. In its final report of October 2003, the task force recommended the formation of a truth, justice and reconciliation commission (TJRC) to look into crimes and human rights violations since 1963.[38] The impetus with which the idea was pursued in the two countries is dissimilar, however.

The TRC and the TJRC

South Africa made substantial progress on the implementation of a truth commission, unlike Kenya, which has stagnated at the recommendation stage of the task force.

South Africa's TRC

Briefly, the TRC sought to investigate details of violations of human rights from 1960 to 1994, to identify the nature and extent of those violations, and the individuals and institutions that perpetuated or participated in the perpetuation. The TRC report was expected to lead to institutional reforms and reparations to victims. The perpetrators of crimes who confessed and sought forgiveness were entitled to amnesty by the commission. The TRC was supposed to bring to light the truth about South Africa's past. It also strove to build a foundation for reconciliation through the illumination of truth, which was supposed to be sought in a way that promoted reconciliation. The commission did not emphasise retributive or criminal justice but rather 'working things together'. Insights gathered through the TRC's investigative process were supposed to lead to the transformation of the institutional framework of government. Indeed the TRC report records massive human rights abuses and makes important recommendations for reparations to victims.[39] There was opposition to the final report from senior officials in the ANC and the National Party, however, when both parties were implicated in human rights violations. The current South African president Thabo Mbeki argued that the ANC was involved in a liberation struggle and whatever ensued during that struggle could not be categorised as human rights violation. Former President F W de Klerk argued that his government had not deliberately perpetuated human rights violations and he personally was unaware of the accusations levelled against his regime by the report. These assertions by both sides of the divide lend credence to the observation that the TRC at least exercised some degree of impartiality in its work.

Kenya and the TJRC

The task force appointed by the government of Kenya recommended, among other things, that by June 2004 the president should establish a TJRC of no more than eleven commissioners to investigate violations against individual and community rights between 1963 and 2002. It also recommended that the commission be vested with powers to bar the guilty from holding public office and to seize fraudulently acquired property. The commission was expected to have powers to summon anyone and to grant amnesty to those who willingly surrendered stolen wealth. Victims of injustice were to be redressed through compensation, restitution and reparations.

Today, the NARC government's commitment to implementing the task force's recommendations seems to have lost impetus. By January 2005 there was little sign that the government would move toward implementing the task force's recommendations. Given the enthusiasm with which NARC advanced the idea of a truth commission during its campaigns, the question many observers have been asking is why nothing substantive seems to be happening and whether Kenya will hear the truth about past crimes. But the government has instituted several mini-commissions to look into a series of specific crimes and other issues outside the recommendations of the task force. This has raised fears that the NARC government, currently bogged down in internal wrangling and accusations of corruption, is no longer willing to implement a broad-based TJRC. In part this is because the NARC government itself is populated by members of the two former regimes, some of whom were alleged to have participated in the perpetration and perpetuation of economic crimes and ethnic violence in 1992 and 1997. It is argued that the government cannot implement a TJRC without incriminating itself. Second, increased tensions and wrangling in the ruling coalition have led the Kibaki government to engage in the politics of survival where political clout and support are procured at the expense of transparency and accountability.

TRC and TJRC: a comparison

While Kenya's TJRC seems to have stagnated at the level of the task force's recommendations, the South African TRC has made tremendous progress since its inception in 1995. The TRC has received very favourable

reviews, particularly from outside South Africa.[40] Inside South Africa, on the other hand, the TRC's work remains a controversial subject. There are debates about whether it advanced questions of truth, justice and reconciliation or undermined them. Some people have dismissed the TRC as a sensationalist circus[41] while others have viewed it as nursing a bias toward the ANC, despite Mbeki's opposition to parts of the TRC report.

Various scholars and commentators have criticised the TRC, among other issues, on its investigative processes (that there was no collaboration of evidence), amnesty (that this provision sacrificed justice) and reconciling South Africans. (Reconciliation is a process rather than an event and depends on individual dispositions. Critics argue that the TRC could only facilitate the process and not allege that in itself it was reconciling people, as its name suggests.) (These appraisals will be revisited later.)

Truth and reconciliation as a paradigm for peace building

Certainly South Africa's TRC made greater progress in carrying out its mandate, and its structures and processes provided a more ambitious and promising innovation in truth and reconciliation as model, compared with the Kenyan version. The amnesty provision was a middle ground and central incentive in moving the perpetrators in particular and the previously conflicting parties in general out of their hardened positions. In other words, the price for historical truth and the presumption of reconciliation involved a significant compromise in the pursuit of criminal justice.[42]

Broadly, there is no single formula for constructing a truth commission. The structure, mandate and other details of such commissions are/should be dictated by the particular circumstances of each individual country. However, by and large, truth commissions have included investigations, amnesty for confessed criminals, prosecution of the worst offenders who refuse to cooperate, and compensatory settlements for victims. As a paradigm for peace building, truth commissions generate a variety of reviews, ranging from legal, moral to those suffused in religious and social science critiques.[43]

This paper contends that truth and reconciliation as a mechanism for peace building goes beyond conflict settlements toward a point that addresses those relational components of reconciliation. It is true that the mechanism carries new challenges, but it at least embodies pragmatism and principle in terms of transcending traditional approaches, especially those that expired with the cessation of physical hostilities or the signing of peace agreements. Truth commissions are designed to be processes that build durable blocks for sustainable peace and ensure non-repetition of past crimes. It is increasingly obvious that the real challenge for most countries emerging from transition (including South Africa and Kenya) is to build a society that is truly participatory and fulfils the basic needs of its people. Truth commissions can act as bridges toward that form of society. They are points of departure for a process of transformation that seeks to fulfil rather that frustrate the enjoyment of human needs. But they are not enough in themselves. If structural inequalities continue to prevail, new fissures will be generated that give rise to alienation and new forms of conflict. The various countries where truth commissions have been established (including South Africa) there are indications that far-reaching challenges are still to be met. In some cases, such as Chile, political turmoil still prevails. In South Africa political violence has subsided tremendously although structural violence has shaded into criminal activities, especially in such poor areas as Soweto.

Prospects

This paper sought to investigate the various forms of violence and injustices that characterised two countries, South Africa and Kenya, between 1948 and 1994 and 1963 and 2002 respectively. It aimed to balance historical accounts of the South African and Kenyan situations with a conceptual exposition of conflict management theory. The paper generally observed that the conflicts in the two

countries were not single-issue situations. The sources of violence and gross human rights violations were diverse and complex. They permeated the various facets of society and were mutually reinforcing in pronouncing the conflictual behaviour. At the time of transition (1994 in South Africa and 2002 in Kenya) both countries showed signs of emerging from various forms of repression, authoritarianism and violence. A comparative interest in the two cases has been fuelled by Kenya's wish to create the momentum for a truth commission on the lines of the model that South Africa pursued after its transition in 1994. It is safe to assume that violence and gross human rights violations played a central role in shaping the two countries' interest in the idea of a truth commission.

Notes

1 Section 2A of Kenya's constitution was repealed in this year, although the basic single-party structures were retained.
2 See A M Johnston, Self determination in a comparative context: Northern Ireland and South Africa, *Politikon* 17(2), December 1990, pp 5-22.
3 See The Kenyan authors of this book have decided to remain anonymous because they still live in their country, in *Independent Kenya*, Zed Press, 1982, p xi.
4 H Adam and K Moodley, South Africa without apartheid: dismantling racial domination, Berkeley: University of California Press, 1986, p 20.
5 A Lisphart, The ethnic factor and democratic constitution making in South Africa, in E J Keller and L A Picard, *South Africa in Southern Africa: domestic change and international conflict*, Boulder and London: Lynne Rienner, 1989.
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CONSOLIDATING PEACE AND SECURITY IN AFRICA

Recommendations to the Commission for Africa

JAKKIE CILLIERS

Context

Africa is faced with a range of security challenges, all of which require a long-term capacity-building approach. There are no quick solutions to instability and insecurity in Africa and the UK government should champion Africa at every meeting of the G8 and commit itself to the global reforms and initiatives required for an improvement in the continent's current situation – a long-haul process. Since there is an abundance of literature on the inequalities in the global system that inhibit African development, the rest of this paper engages narrowly on matters relating to peace and security.

Recent years have seen unprecedented levels of African engagement and leadership in conflict management, including support provided to the African Standby Force (ASF) and other components of the Peace and Security Council (PSC). Currently the most serious gaps in Africa as far as peace and security issues are concerned are twofold.

The first is the tentative nature of African commitment to operationalise the linkage between **conflict prevention and governance** – despite the stated intent of the NEPAD APRM to undertake studies on governance standards and capacity. Moving from a focus on conflict intervention and mediation to conflict prevention and its associated focus on human rights, democracy, good governance and the strengthening of civil society institutions demands that the UK and others should not focus only on the ASF (conflict intervention), but retain a focus on conflict prevention. Africa may suffer unintended long-term damage if the current focus on conflict intervention and the potential diversion of development assistance to emergency response and peacekeeping replaces approaches that address the root causes of conflict and deprivation.

The second relates to **post-conflict reconstruction**. In an environment characterised by extreme poverty, Africa's conflicts are recognised to reflect strong economic incentives. By implication, many current peacemaking approaches, predicated on the achievement of a political agreement between warring elites, ignore the developmental and economic nature of conflict, and therefore its long-term resolution. In response, the international community needs to move beyond the concept of integrated peace missions. Consolidating peace from war requires not only greater coherence and coordination among the various UN departments and agencies and a more integrated crisis management system, but also a clear command and control structure for all UN entities on the ground and coherence in the approaches between agencies as diverse as the World Bank and the UNDPKO. When applied to existing concepts of peacekeeping and post-conflict reconstruction, implementation of the concept

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of 'developmental peacekeeping' can help break the African conflict trap.[1]

Responses to insecurity in Africa that should be championed by the Commission for Africa can be listed at international, continental, regional and national levels.

- At international level there is a clear need for an integrated approach to addressing African insecurity. One component is the development of a single concept of peacekeeping where the deployment of components of the ASF can seamlessly translate into UN missions and all forces, robust or Chapter VI, operate under the mandate of a single authority, typically a United Nations Special Representative of the Secretary-General (UNSRSG). The capability and interoperability between AU and UN missions is therefore a key consideration. Beyond the vertical integration of peacekeeping, peacekeeping faces the horizontal integration challenge of speeding up post-conflict reconstruction and development and expanding the mandate of the UNSRSG to include post-conflict reconstruction and even components of development.
- The challenge at continental level is clear – supporting the security architecture presented in the Protocol on the Peace and Security Council and ensuring balance among its various components. While a great deal of attention is being devoted to the ASF, an equal focus should be placed on prevention. The establishment of a Continental Early Warning System (CEWS) is an insufficient but necessary part of this. It is more important to support the work of the AU Department of Political Affairs, the work of structures such as the Commission for Human and Peoples' Rights and an investment in building sustainable civil society components to root conflict prevention in local and national communities. While the nature, character and structure of the CEWS are still very much at the conceptual stage, the part played by civil society in various roles is crucial.
- Regionally there are substantive differences and gaps in the capacity of various regional economic communities (RECs) and much can be done to harmonise this capacity and planning at these levels with those of the AU and the UN. The RECs will need special support if they are to fulfil their responsibilities regarding conflict prevention and mitigation. Support by international partners should note the existing disparity in the capacity of the RECs to deliver their part in these processes.
- The biggest challenge remains at national level, since it is the absence of functional states and law and order that fuels African conflicts. No amount of tinkering at regional and continental levels can ultimately compensate for the absence of functional governance at national, provincial and local levels. Most donor countries have already adopted an approach that seeks to reinforce success – measured in democracy, quality of governance and pro-development policies. These tentative approaches should be pursued, actively rewarding and reinforcing success, and enabling stronger states to assist their weaker neighbours. Throwing good money after bad has proven a bad investment over many years, as has been demonstrated in the provision of humanitarian relief and development assistance.

The continent faces a range of other security-related problems. Past and current conflicts in Africa have been exacerbated by the almost unhindered flow of licit and illicit arms. Securing small arms is as easy for ordinary people as it is for most African governments to procure heavy armaments without registering such transactions with the UN. If nothing is done to change this situation, it is doubtful whether any efforts to eradicate conflicts on the continent will succeed.

A variety of organised and unorganised criminal activities continue to threaten the security and development of most African countries. These include the illicit manufacture of, trafficking in and abuse of drugs, money laundering, and other cross-border crimes such as vehicle theft and human trafficking. The lack of capacity on the part of most African states to collect data on crime, often coupled with a largely absent enforcement capacity, is disturbing.

No less important in enhancing the capacity of the continent to deal with security challenges is the need to strengthen state institutions charged with **security sector oversight** responsibilities. This need is even greater in countries that are emerging from conflicts, given the enormity of the risk of sliding back into conflict if the process of security sector reform is not well monitored. Related to this is the need for a meaningful disarmament, demobilisation and reintegration (DDR) process that empowers ex-combatants for sustainable reintegration into civilian life. Indeed, this cannot be achieved in isolation from the other immediate post-conflict developmental challenges, which include the creation of socio-economic conditions for lasting peace, the provision of basic services and the reconstruction of infrastructure.

The following recommendations in the area of peace and security support the broad issues referred to above.

Recommendations

Adopt, advocate and support the implementation of the recommendations of the recent 'Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, A more secure world: Our shared responsibility'.

Conflict management

- The UK and the G8 should encourage, through the aggressive use of development assistance, the rationalisation of Africa's overlapping RECs, particularly the problems presented in the relationships between COMESA, SADC and IGAD and between ECCAS, EAC and SADC. The G8 should actively discourage funds and projects (particularly through and from the European Union) that support these overlapping structures. In doing so, the G8 should note that the rationalisation of the RECs is a key priority of the AU, even if the AU has little leverage to move forward on its agenda.
- Where comprehensive conflict management structures are absent or inoperative (as with IGAD and ECCAS), the Commission for Africa should encourage the development of such structures as regional confidence-building mechanisms and support them through capacity-building initiatives.

Conflict prevention including the Continental Early Warning System (CEWS)

- Provide dedicated/earmarked support to the AU Commission on Human and Peoples' Rights in The Gambia. The current budget and infrastructure of the commission does not enable it to deal with its workload and it does not enjoy sufficient priority within the recently approved budget of the AU Commission.
- Provide dedicated support for the African Court of Justice (which will now combine the Court of Justice referred to in the Constitutive Act and the Court on Human Rights referred to in the Protocol to the Commission on Human and Peoples' Rights). The court does not appear to enjoy sufficient support within the emerging architecture of the AU.
- Support the creation of a dedicated fund / earmarked funds for election observer missions through the Department of Political Affairs within the AU Commission. Support the work of the department in the establishment of a database and systems for the equipment, training, organisation and funding of election-monitoring missions. The AU is currently almost entirely dependent on donor funding for election observation and monitoring.
- Support the establishment of a research institute to sustain peace and security work for the commission, the CEWS and the PSC in Addis Ababa, based on the International Peace Academy in New York.[2]
- Support the establishment, as part of the continental architecture, of a dedicated CEWS at continental and regional levels that uses open-source information and interacts with civil society and others in the provision of conflict-prevention information.
- Provide the Peace Fund with unallocated

funds for use in mediation, by the Panel of the Wise, appointment of special envoys, mediators, etc. Give the AU control over the use of these funds.
- Invest in building selected, sustainable African research institutes that can support policy implementation through competent and credible research.

The African Standby Force (ASF)

- Offer, through the United Nations, a technical study to be undertaken with the AU PLANELM to define a continental logistic system that is integrated with the UN logistic resources for peacekeeping (such as the strategic deployment stocks at the UN logistics base at Brindisi), supports the requirements of the AU, and takes the requirements of the regional brigades into consideration. Currently each of the various RECs is developing an own logistic framework that is often based on political trade-offs (such as decisions on the location of logistic bases) rather than objective criteria related to military requirements and interoperability.
- Support a motion, through the UN, that calls for the integration, harmonisation and standardisation of ASF logistic, command, control and other systems with those of the UN. This is critical if the international community is to advance on the horizontal integration of peacekeeping as advocated in the introductory paragraphs of this document.
- Support the African Peace Support Trainers Association (consisting of a network of key African peacekeeping training colleges, institutions and NGOs) as an additional vehicle to more formal systems in order to integrate African lessons learned into teaching, to develop common doctrine, etc.
- Work within the EU and its commission to simplify the rules and requirements of and red tape within the Peace Facility to allow African ownership and use in a more effective manner.
- Provide support to the AU Peace Fund for use by the AU to augment the Peace Facility where it is constrained in covering costs for specific budget line items.
- Utilise and expand existing donor consultation fora (such as that in Luxembourg) to coordinate the support provided to the AU and RECs to avoid duplication and improve efficiency. Involve the AU and RECs in setting these priorities and invite the AU and RECs as participants/observers.
- Provide material, technical and logistical support to the RECs to enable them to implement their commitments as part of the ASF. This should be based on needs assessment done by the RECs but standardised across regions in order to ensure regional ownership of the process.
- Support and strengthen current African civil society early warning capabilities (such as those dealing with humanitarian, food security, environmental, small arms and governance issues). They are important assets and integral parts of a holistic and comprehensive African early warning capability.
- Provide continuous political and diplomatic support, encouragement and resources to the AU aimed at advancing the implementation of the PSC Protocol.

International peacekeeping mandates

- Pioneer a review of UN doctrine to ensure concrete action for intervention in humanitarian catastrophe. The review should provide for a mechanism to configure regional standby forces, such as the ASF, as components of UN armed forces within the global security architecture. Given the difficulties related to UN decisions for intervention (affecting the timely deployment of UN forces), the review should provide for a mechanism that allows regional deployments endorsed by the UN Security Council. This would require that deployments aiming at creating conditions for the subsequent deployment of UN peace operations gain access to the strategic deployment stocks at Brindisi.
- Work within the UN Security Council for

an approach where mandates incorporate the responsibility to enforce appropriate decisions of the council relating to any of its peace-building instruments (such as sanctions) that may be invoked.
- Given the centrality of the AU in brokering peace in Africa, regional organisations and regional peace initiatives, the mandates of UN peace operations in Africa should enjoin the leadership of the missions to collaborate/consult with these regional institutions within formal frameworks and not on an ad hoc basis.

Security sector reform

- Strengthen, support and build the capacity of African institutions responsible for playing an oversight role in the security sector such as legislatures, parliamentary portfolios committees and other security reform/oversight committees. Attention should be given to countries emerging from conflict and those with unstable governance institutions.
- Prioritise security in post-conflict African countries. More attention should be given to the creation of professional, efficient and effective armies, police forces and other security bodies. The current focus on downsizing and rightsizing the armed forces and lack of focus on the criminal justice system within the context of massive unemployment and insecurity does not create conditions for newly created security structures to contribute to sustainable peace efforts.
- Regulate the activities of private military companies operating from Europe into Africa and work with African governments in combating mercenary activity.

Arms management and the fight against crime

- Initiate a process towards an international treaty to regulate the arms trade. To this end, broad-based consultations with governments and non-governmental organisations should be conducted. Greater public transparency in the arms trade is also necessary and would support the inclusion of provisions that promote the exchange of information on arms transfers by African countries. This could be done through the UN Register of Conventional Arms, among others.
- Identify activities that can support states in creating mechanisms for evaluating the impact of small arms in their territory and identify priority areas for action. Support the transfer of success stories from those African countries that have developed national responses with support from the international community.
- Mobilise resource and technical support to enhance the capacity of African countries to conduct research on national and international crimes as well as detection and deterrence.[3]

Post-conflict reconstruction

- Support the efforts by the NEPAD Peace and Security Committee and others to close the gap between peacekeeping and the commencement of post-conflict reconstruction work.
- Develop realistic alternatives and opportunities for former combatants that enable them to benefit from peace.
- Incorporate a developmental approach to peacekeeping by addressing material drivers of conflicts. Where states have failed or their capacities have been severely eroded, mandates may consider giving transitional administration responsibilities to relevant peace support operations (PSOs).
- Encourage a closer link between development workers and peacekeepers to ensure better coordination and integration of peacekeeping and development tasks.
- Ensure that the energies of donors are focused more on coordinated reconstruction efforts during the immediate post-conflict phase through the development of a single national coordination mechanism. The contribution of the international community to post-conflict reconstruction work in Africa should promote local own-

ership of the process to the extent that this is possible.
- Pay special attention to the youth as part of post-conflict reconstruction plans and programmes, as they may be a threat to peace and constitute the future of countries emerging from conflict.

Conclusion

While we appreciate the daunting nature of Africa's challenges, we believe that concerted international efforts would make a significant contribution to addressing Africa's current status of insecurity and lack of development. Mobilising international support through, inter alia, the G8 and the EU would be an important contribution to the renewal of the continent.

We are mindful that implementation will require the assistance of the international community and the cooperation and efforts of African governments and organisations. While the Commission for Africa is concerned about what the international community can do for Africa, attention should also be placed on what the continent can do for itself.

Notes

1 See an earlier submission from the African Human Security Initiative (AHSI) to the commission: 'From integrated to developmental peacekeeping – breaking the conflict trap', October 2004.
2 This, and a number of other recommendations, reflect ongoing work by the ISS and could admittedly be viewed as self-serving.
3 A recent extensive study that the Institute did for the United Nations Office on Drugs and Crime (UNODC) pointed out the virtual absence of reliable data on crime across much of Africa and the problems associated with the limited available data.

PREPARE AND PARTICIPATE

Africa's contribution to peacekeeping

ALEX MORRISON

Introduction

"Africa has an indispensable contribution to make in ensuring that 2005 becomes a turning point for the continent, the United Nations and the world." According to UN Secretary-General Kofi Annan's statement on January 30th, 2005 to the 4th Ordinary Session of the Assembly of African Union held in Abuja, Nigeria, this contribution includes continued involvement in peacekeeping "when prevention fails, UN peacekeepers, including men and women in uniform from this continent, have proven time and again their value in helping to end civil wars." Later in his presentation he called for closer peacekeeping ties between the UN and Africa and the African Union and acknowledged that "we must work hard to achieve" those ties. In his conclusion, he noted that "We are at a defining moment for the international community and its primary instrument of common progress, the United Nations."

This article will examine and comment on some recent writing and reports on African participation in peacekeeping and peacekeeping-related activities and submit some considerations for future research, exploration and action.

As of the end of December 2004, according to UN statistics, just over 30 % of the 102 countries supplying peacekeepers are from Africa. African countries have suffered 457 of the 1965 peacekeeping fatalities suffered by UN forces to date. It is thus clear that the majority of African countries are participating in peacekeeping activities. It is also clear that a large number of countries have yet to take part in a single mission. Of course, these figures also need to be understood within the context of the participation of African countries in non-UN peacekeeping missions in Africa and elsewhere.

Three articles on various aspects of African present and future contributions to peacekeeping writ large are featured in Volume 13, #2, 2004 of the *African Security Review*. The first is *African Standby Force: East Africa Moves On* by Nelson Alusala of the Institute for Security Studies.

Alusala comments on African endeavours to develop a common security policy and then to form an African Standby Force (ASF) within that policy. Dealing with the "early prevention of conflicts and maintenance of durable peace in Africa", he quotes other sources as believing that "the African challenge is a complex one…reflected in the continent's economic decline as well as its political and institutional failures." The author concludes his introductory material by asserting that "Africa therefore continues to demonstrate

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eagerness in taking responsibility for its destiny" by putting African emphasis into its efforts.

Thirteen East African countries have banded together to raise an Eastern Africa Standby Brigade (EASBRIG). Representatives from most of the 13 countries, with observers from the Common Market for Eastern and Southern Africa (COMESA), the Multinational Standby High Readiness Brigade for United Nations operations (SHIRBRIG) and Reinforcement of African Peacekeeping Capacity (RECAMP) met in early 2004 to discuss how to further the formation and operationalization of EASBRIG. They conducted their discussions within the range of missions and scenarios devised by the African Chiefs of Defence Staff (ACDS). The range covers activities from provision of military advice to a mission, through a co-deployed regional observer mission and a stand-alone mission of that type, to a UN Charter Chapter VI operation, a multi-dimensional peacekeeping mission (of the Chapter VI-and-a-half type) and finally, to a mission that would include intervention in situations when the international community is slow to act.

Following a description of the planning and implementation process with attendant timelines, the author notes that the setting-up of EASBRIG "underscores [the countries'] commitment towards the management of conflicts in the region." On the subject of moving from EASBRIG to ASF, the conclusion of the article is that "the task is not massive – it simply requires commitment."

Establishing and deploying a rapid reaction force is not an easy task; the author recognizes this through his endorsement of a detailed, methodical, phased plan. All too often, the necessity of preparation and training are overlooked. In addition, units designed for deployment as part of a rapid reaction formation must be available at short notice and should not be units that are double or even triple tasked.

Developmental Peacekeeping: What are the Advantages for Africa by Nozizwe Madlala-Routledge and Sybert Liebenberg. This article defines developmental peacekeeping as a "post-conflict reconstruction intervention which aims to achieve sustainable levels of human security" The authors distinguish their approach from traditional peacekeeping in two ways: it focuses on human security and "it does not distinguish between peacekeeping and peacebuilding on a process level. Peacekeeping, peace-enforcement and peacebuilding are collapsed into one process." They call for future African peacekeeping missions to be composed of "multi-disciplinary teams of development economists, civil engineers, public and development managers and policy developers which are deployed at the onset of an operation."

This approach is one that must be recognized as essential by all who are involved in any aspect of planning and/or conducting peacekeeping operations, however they are defined. During my time at the Pearson Peacekeeping Centre, we referred to this as "The New Peacekeeping Partnership" and suggested that the team include those elements mentioned above as well as good governance officials, civilian police and others essential to post-conflict restoration. Ensuring that developmental peacekeeping is adopted will take much effort and it will be necessary to win over those who still think that peacekeeping is a purely military activity.

The third article of interest is by Eric Berman and is entitled *Recent Developments in US Peacekeeping Policy and Assistance to Africa*. The author reviews US contributions channelled through the African Crisis Response Initiative (ACRI), Operation Focus Relief (OFR), and the African Contingency Training and Assistance (ACOTA) effort. The United States has also provided financing and personnel expertise to assist in other areas. He concludes that US aid in many forms will continue but must be in accordance with African aims and needs and on a sound foundation of African ability to "prove they have sufficient capacity and structures in place to maintain and build upon what is provided". In other words, the Americans want to ensure they receive the best value for their money.

These three substantial views each indicate

that Africans are capable of increasing contributions to regional and international peacekeeping. Although the continent's record of raising and deploying forces is impressive, the rest of the world looks for increased effort.

There are many aspects that need to be considered by the international community as it looks to Africa to build on its record of peacekeeping to date by expanding greatly its participation in international conflict prevention and resolution operations. Of course, they must also form part of the agenda whenever and wherever African countries, themselves discuss their past performance and look to the future. Some of these issues were raised at the recent meeting of the UN Special Committee on Peacekeeping Operations One of them concerned the fear that increased participation by African countries in African regional peacekeeping missions might reduce the participation of those countries in non-African operations. Another focused on the possibility that increased regional peacekeeping could diminish the important role the United Nations organization itself plays in peacekeeping. One country advocated increased "coordination with regional organizations in the field", while recognizing the responsibilities of the Security Council. An observer country mentioned that "the civilian component of peacekeeping operations had become equally, if not more, important than the military one."

There is no doubt that regional peacekeeping has taken great strides in the past decade or so. From calls for individual countries to participate in missions in their own region, through to regional countries taking responsibility for entire missions, it is now apparent that Africa has heeded those calls in an admirable fashion. In fact, as can be seen from a reading of the statements made by UN member states in the sessions of the Special Committee on Peacekeeping Operations, there is now concern that the UN's and the Security Council's special responsibility for the maintenance of international peace and security could suffer because of the rapid advances in regional peacekeeping. There is little possibility of such fears becoming reality. The UN member states would not permit it to happen. In addition regional countries recognize their continuing need for UN and individual country assistance with financing, education, training and other aspects of preparing for and conducting operations.

Instead of being apprehensive about Africa's regional peacekeeping record, the UN and the international community should applaud it and pledge to continue and enhance the assistance they provide.

African participation in peacekeeping has not been limited to troop deployments. The three articles referred to in this comment show evidence of great thought and wisdom in proposing new directions, such as that of developmental peacekeeping. The UN Secretary-General, in addition to the words quoted at the start of this comment, had previously indicated that he would "continue to highlight the urgent need for the international community to provide adequate support to strengthen African peacebuilding capacities." Further, he spoke strongly against any move to limit the participation of non-African countries in African peacekeeping missions. These statements clearly illustrate his resolute belief in regional peacekeeping and his belief that it need not be exclusionary.

In addition, the establishment and successful research and training programs of the Kofi Annan International Peacekeeping Training Centre (KAIPTC), indicates that African countries wish to assume responsibility of training their own contingents before deployment. One indication of the degree of esteem in which the KAIPTC is held is that its Commandant is a member of the three-person Presidency of the International Association of Peacekeeping Training Centres. The recent launch of the web-based magazine, *Training for Peace*, is a clear indication of the willingness of the KAIPTC not to restrict its activities to Africa. This international outlook is welcome and will do much to extend its good reputation. Subjects that might attract the attention of peacekeeping thinkers and writers could include additional thoughts on developmental peacekeeping, the optimum balance of regional and non-regional coun-

tries in regional peacekeeping endeavours, innovative mission organizations tailored to the priority tasks that include imaginative uses of civilian segments, the perennial issues of financing and transportation, and how to ensure that lessons learned from previous missions are made readily available to future undertakings, amongst others. It might also be useful to explore in *Training for Peace* and elsewhere why countries such as Canada have drastically reduced their participation in UN peacekeeping missions, whether this withdrawal is having negative effects, and, if so, how they might be overcome.

The current international situation presents a unique opportunity for African countries to expand and enhance their preparation for and participation in peacekeeping missions. For its part, the international community must welcome and assist (in all the ways it can) African efforts to assume a more significant role in conflict resolution and peacebuilding.

COMMENTARY

ASSESSING THE STABILITY PACT FOR THE GREAT LAKES REGION

MARTIN R RUPIYA

There is growing scepticism about the viability of the Peace, Security, Good Governance, Economic Development and Regional Integration Stability Pact (henceforth referred to as the Stability Pact) for the Great Lakes Region (GLR). The Stability Pact, due to come into force in June 2005[1], has been organised and supported by the United Nations (UN) and the Africa Union (AU) ever since the genocide in Rwanda between April and June 1994 shocked the world. However, there is increasing evidence that key actors in the GLR are reluctant to embrace the pact and have even embarked upon undisguised efforts aimed at undermining the process even before it is launched. This commentary hopes to drew attention to some of the flaws associated with the Pact's structure and process so that corrective action maybe taken to keep the Pact intact and on course.

The concept of a stability pact has been around for a while. It is a mechanism that generates comparative security advantages and fosters stability in areas where regimes are weak and communities are traditionally at loggerheads. The idea of a Pact is based on two pillars: first, the decisive abandonment of military force as an instrument of policy; and second, embracing new values that lead to economic development and the social upliftment of cooperating communities. Perhaps the best example of a previously conflict-ridden area now at peace is Western Europe. The start of change in the area was driven by the United States in 1945 after initially missing the chance to do so in 1919. Following the success of the initiative, the European Union has become the anchor around which several pacts have recently been established. These include agreements between Greece and Turkey; Central and Eastern Europe [Bulgaria, the Czech Republic, Slovenia, Hungary, Poland and Romania] and the Baltic States [Estonia, Latvia and Lithuania] and the Balkans arrangement with the Caucasus area [Southern Caucasus, Armenia, Azerbaijan and Georgia].

A summarised description of a region faced with security problems suitable for a stability pact includes the following:

a) The weak state syndrome: states are unable to impose themselves throughout their geographic territory and lack the ability to govern, levy and collect taxes;
b) Nations faced with conventional and unconventional threats to security and stability;
c) The sharing of (escalating) national and regional security and defence problems that are presented by geo-strategic realities; and
d) A political desire for (eventual) regional integration based on converging economic and social disparities as well as polarisation. The past and current conflicts, and their

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impact on the GLR, make the area suitable for the introduction of a stability pact. The UN and the AU should be commended for coming up with this idea. However, the current initiative has some problems: external players have made serious policy formulation flaws; important local actors are resisting taking 'ownership' of the process; and there are serious structural and procedural deficiencies in the timetable leading to the official launch in June 2005.

A brief review of the nature of the conflict system and its impact on the GLR will provide the necessary background to understanding these problems. First, the longest-running conflict that has weakened central authority in the GLR can be traced to Uganda in 1986 when Yoweri Museveni (head of the National Resistance Army) marched into Kampala and took power. The Lord's Resistance Army has since contested Museveni's political control with the result that over 1.2 million refugees have taken refuge in the North and flowed into Sudan. Secondly, the eruption of ethnic conflict and genocide in Rwanda and Burundi also laid the basis for a complex regional conflict system that has proved immune to several peace agreements. The ethnic-based Tutsi and Hutu struggle in Rwanda, especially between April and June 1994, culminated in the loss of over 800 000 lives. Meanwhile, in Burundi, the same conflict system triggered civil strife that has so far claimed 300 000 lives, displaced millions and resulted in millions of refugees living in neighbouring states. The final events took place in Zaire (now the DRC) in 1996 when armed groups, with the assistance of neighbouring states Uganda and Rwanda, removed President Mobutu Sese Seko from power. His departure unleashed forces that contributed to the conflict that has since claimed an estimated 3.2 million lives.

In the two decades since Museveni's 1986 march into Kampala, the various conflicts in the GLR have become enmeshed. The result is a disheartening mess of unhappy consequences: individuals exploit natural resources illegally which helps to finance the wars; civil wars in one state are fought on neighbouring state territory creating casualties and displacing millions; people fleeing war-zones have, in turn, become refugees in neighbouring states. The cycle is destructive and difficult to break. Of the 9.5 million refugees on the African continent, 73.7% live in the GLR. This mobile community of refugees generates regional and cross-border instability which threatens to destabilize the countries that host them. In this arc of conflict, the capital cities of Uganda, Rwanda, Burundi and the DRC stand out as islands of control. The intense political and military competition means that most governments pay little attention to long-term national development or regional integration and rely almost solely on military means to stay in power. This continues despite the signing of several peace agreements in Rwanda, Burundi, the DRC and even in Uganda. The region has now become well-known for paying little attention to peace treaties.

In fact, a total of eight peace treaties have been agreed to but so far all have failed to bring stability though some still serve as important frameworks. In July 1999 the Lusaka Ceasefire Agreement was signed by parties to the DRC conflict and was followed by the 2000 Arusha Agreement on Burundi. Following non-compliance with the provisions of the Lusaka Agreement, several more pacts were reached: the Pretoria Agreement of July 2002, the Luanda Agreement of September 2002, the Declaration in Principle on Neighbourliness and Cooperation (the parties were Burundi, the DRC, Rwanda and Uganda) signed in Washington in September 2003 followed by a reaffirmation of the same (again in Washington) in July 2004. The agreements in all the countries also responded to numerous UN Security Council and AU Resolutions calling for the peaceful resolution of conflicts.

It was against this background that the UN, working through the AU, suggested the introduction of a stability pact as a long-term solution. The UN's suggestion was clearly expressed in the preamble to the First Heads of State and Government Summit communiqué issued after the Dar es Salaam meeting in November 2004. Implementation of the pact was designed to cover two phases: consultation and implementation. The first stage of inclusive consultation was to take place

within states, during which time the governments would engage with parliamentarians, non-governmental organisations, youth and women's groups and other civil society groups. The first stage would then culminate in the building of a national consensus about becoming an integral member of the Pact. The second phase (implementation) would begin once new institutions had been created that would manage the process after its formal launch. Stated differently, the two phases represent a clear distinction between "philosophical buy-in" and "establishing the institutions". The institutions would, in future, take on the responsibility of analysing conflict conditions and coming up with alternative options informed by the principles of the Stability Pact.

Two events that occurred in the three months between November 2004 and January 2005 signalled that the Stability Pact was already under serious threat even before its formal inauguration barely four months away.

The first event was Rwanda' threat to invade the eastern DRC issued on 26 November. The purpose of the invasion was stated as, 'flushing out former (Hutu) Rwanda Armed Forces – known as ex-FAR and *Interahamwe* rebels.' The announcement was made a week after to the draft Stability Pact document had been initially signed (20 November) in Dar es Salaam in the presence of UN Secretary-General, Kofi Annan and the AU Chairperson, Nigerian President, Olesugun Obasanjo. However, an important section of the draft, Section V, para. 82, provided for the Stability Pact to "take effect immediately."

Stated differently, from 20 November 2004, a new structure was supposed to have been inaugurated as part of the implementation of the Stability Pact protocol. That structure was the International Regional Committee (IRC) – made up of Ministers of Foreign Affairs, Defence and Security drawn from the signatories and supported by two well-known experts. The IRC's mandate is to investigate allegations of violations and to come up with options on all matters of strategic security significance. Rwanda, instead of threatening to invade the eastern DRC, should have addressed their concerns to the IRC. On the other hand, Article 24 of the Stability Pact also obligates member states to "deny use of their territory by armed groups that intend to carry out acts of aggression or subversion against other member states." This placed the onus on the DRC government to reign in the rebels present in its territory that threatened the security of a member state, Rwanda. However, instead of acting through the IRC and allowing the Stability Pact to begin its first task, countries continued taking unilateral action. As the spokesperson for the special representative for the UN Secretary-General on the Great Lakes region, Ambassador Ibrahim Fall, was to lament, the continued sidetracking of the provisions of the Stability Pact 'was a great shame.' This event was also a demonstration that states in the GLR still need to make the conceptual leap toward accepting the conflict management principles that embody the vision of the Stability Pact.

The second event occurred during the recent 23rd Meeting of the AU Peace and Security Council held in Libreville, Gabon on 10 January 2005 at which the security situation in the eastern DR Congo again received attention. In the communiqué, while reaffirming its support to the Stability Pact, the AU also called for the deployment of troops in order to pacify the volatile area using military means. This decision reveals the AU's realistic acknowledgment of the limitations of the Stability Pact initiative. But, on the other hand, the AU, while paying lip service to its association with the process, also appears not to have full confidence in the Stability Pact. As a joint partner in the motivation for the Stability Pact, the AU is therefore not playing an honest broker role and needs to realise how its ambivalence could weaken the Pact once it comes into force.

Structural and procedural difficulties

In addition to the two events described above, there are also structural and procedural difficulties associated with the Stability Pact, as presently conceived, that need to be highlighted.

The first difficulty relates to the structure of the security and economic framework of the Stability Pact. The framework appears to have

studiously avoided linking itself with any similar local structures already in existence and is therefore unlikely to be well-received by local communities.

Operating almost within and adjacent to the GLR is the Southern African Development Community (SADC), the regional organisation responsible for peace and security. SADC not only represents one of the five AU Regional Economic and Security Communities (RECs) but is has also taken the initiative by setting in place a Mutual Defence Pact. The politico-military arrangement is directly supported by the regional brigade elements drawn from member states. The elements have also tested their integration during joint regional exercises over the past ten years. Furthermore, three members of SADC (Angola, Namibia and Zimbabwe) intervened in the crisis in the DRC in July 1998 and through this action, facilitated the entry into the peace process of the AU's Joint Military Commission (JMC) and the UN's Mission in the Congo (MONUC). SADC troops have inherent operational level advantages in the areas of language, geography, ethnic identities and short operating distances or lines of communications over any body of troops that may be deployed to support the Stability Pact from further afield. Unfortunately, they also have the obvious disadvantage of having been belligerent parties during the fighting. Despite all these local/regional advantages, SADC has not been formally approached to become part of the stability framework. If we take the role of the North Atlantic Treaty Organisation's (NATO) in facilitating the stability of Europe after 1945 as a comparative example of a successful Pact, then the GLR Stability Pact to be launched in June will have a lot of work to do to recreate new military structures to enforce compliance amongst some recalcitrant actors and spoilers.

At the signing ceremony in Dar es Salaam, nine of the 18 countries (50% of those signing the document either as core countries or witnesses) were from SADC, yet each had been invited as individual countries. The point to note is that, for those arguing in favour of the GLR Stability Pact, ignoring the role that SADC can play as an integral part of the stability framework, is to deny the use of an important building block that has the potential to quickly consolidate the new initiative.

A second flaw in the structure is that elements of the Stability Pact have not been 'infused' into the various peace treaties agreed to in the GLR during the period 1999 to 2004. Of the eight agreements, the majority of which focus on the DRC, none refer to the Pact or to its principles in any way. Yet available UN documents claim that the Stability Pact process has been under way since the world became aware of the genocide in Rwanda in 1994. This diplomatic omission needs to be acknowledged for what it is: a claim that cannot be substantiated and therefore likely to damage the credibility of the process in future.

There is also the case of existing organisations not wishing to join up with countries perceived as having unstable regimes. In this instance, the East African Community (EAC), comprising Uganda, Tanzania and Kenya, has recently agreed to a far-reaching customs and currency harmonization protocol aimed at fostering federation and integration. They specifically excluded neighbouring states such as Rwanda, Burundi and the DRC. Representatives from these countries attended the inauguration ceremony of the EAC, demonstrating their desire to join, but were accorded observer status only. Once again, the EAC is an important link missing from the Stability Pact.

A final difficulty relates to procedures that need to be followed during the preparatory phase. First, the core countries needed to be identified. A haggling process ensued between the international community and some of the most affected countries in the GLR. Apparently some of these states threatened not to participate in the process if certain geographically contiguous countries were included. Concessions were made, resulting in the exclusion of some obvious candidates from the core category, but in the end eight countries emerged as 'core countries': Angola, Burundi, DRC, Tanzania, Rwanda, Uganda, Kenya and Zambia.

Lessons learned

Are there any lessons to be drawn from the process that selected the final eight? It was clear at the time that parties to the conflict were suspicious of each other but proponents of the Pact tried to paper over the obvious mistrust. However, less than two years later, the membership has changed considerably as can be seen by the enlarged gathering of 18 countries. The preponderance of SADC countries at the ceremony may reflect a partial attempt by the organisers to woo that regional body without making a formal invitation. It is not clear why the organisers might do that.

Yet another procedural conundrum is the requirement that each of the participating countries preside over an inclusive consultation process that embraces non-governmental sectors as well as civil society actors before the formal launch. The objective of this requirement is to emphasise the adoption of peaceful conflict resolution that listens to the concerns and policy advice of civil society. Introducing the stability pact is predicated on states abandoning the use of military force as an instrument of policy and seeking negotiated solutions and pacts as the alternative. To this end, part of the activities during 2004 in the core countries included national consultations and regional gatherings of civil society, youth and women's organisations together with government representatives. The consultative process has only been successful in certain parts.

When the regional consultative process reached Kinshasa during late 2004, governments flexed their muscles and barred NGO representatives from attending what were now referred to as 'state meetings'. There had also been clashes earlier between NGOs and civil society representatives from the DRC and Rwanda. Representatives had been involved in physical brawls and punch-ups at the meeting in Kigali demonstrating the intense national feeling still prevalent in the two countries. There were also attempts by governments to influence the composition of national NGOs and their presentations. Many were transformed rather suddenly and it became evident that some had become quasi-government entities still masquerading as civil society. The net effect was to highlight the governments' unwillingness to reform and transform in an inclusive way. They effectively undermined the building of national and regional consensus within and outside governments. At the end of these gatherings, the civil society meeting delegates described what they wanted their political leadership to concentrate on and emphasised the principles of peaceful co-existence and economic development.

Yet another factor that bedevilled the preparatory stage was the new governments' lack of consultation. States that had previously been excluded from the talks during the initial selection process joined the talks abruptly and without having undertaken the required internal consultative exercise. The process thus had to absorb governments without inclusive representatives from civil society and NGOs. Many of them were naturally unprepared for these demands of inclusion and consultation. When one considers the intentions of the interim preparatory stage and reflects on the traditional differences between states in the GLR, it is safe to say that little has been done to transform these societies so that they are prepared to implement the Stability Pact.

When parties were called upon to sign up to the Stability Pact in November 2004 (the draft document), Section V, Article 82 provided for "its coming into effect immediately," ushering in the philosophy of "peaceful resolution of conflict." In practice, there is minimal evidence of any change in attitude since the signing. The initialling ceremony also (in theory) marked the birth of key implementation structures of the International Regional Committee (IRC). The IRC is made up of the Ministers of Foreign Affairs, Defence and Security drawn from the core countries who are to be "assisted by two well-known persons." The IRC mandate is to identify strategic, national and regional threats and to come up with options that support the objectives of the Stability Pact.

Rwanda's threat on 26 November to invade the Eastern Congo, however, shows that the Stability Pact initiative had already been circumvented before the IRC had a chance to

begin its work. Frustrated at the turn of events, UN officials called (anonymously) for key donors such as the US and Britain to intervene and force recalcitrant regimes to toe the line. However, while the UN officials recognized that some governments would continue to use military force as a policy instrument, they appeared to have ignored major weaknesses that they had suggested should be included in the Stability Pact initiative. Taken as a whole, there are still serious questions to be asked of the concept, the stakeholders' interests and the viability of the GLR Stability Pact.

The conflict system in the GLR has become a complex matrix of actors and alliances, phases and timetables. But the consequences of conflict are as unmistakably clear as the conflict is complex. The Great Lakes Region boasts the highest number of internally displaced peoples, refugees and deaths presided over by severely weakened regimes who are unable to deliver basic services and security. While this article agrees with the notion that a broad-based Stability Pact should be set up in the Great Lakes Region, there is still doubt about the usefulness of the Pact mechanism as it is presently structured. If the Pact proceeds in its current form, then it raises the question of whether the Pact is between states or between communities. Getting communities 'in sync' for the Stability Pact is critical because a common foundation is needed before a common vision and interests can be articulated. Without a common vision and common interest, the different actors and governments can (and will) continue to pursue different agendas characterised by antagonism and narrow, sectional interests. We also need to ask whether it is possible to bring harmony to the deep ethnic divisions that exist between the Tutsis and Hutus in the GLR. Can these traditional rivals overcome their differences to work towards a common destiny where they live side by side? The Canadian Lieutenant General, Mr Romeo Dallaire, who was present during the massacres in Rwanda alludes in his book, *Shaking Hands with the Devil,* that the hatred between Tutsi and Hutus is deep and possibly irreconcilable given the absence of social building blocks in that society. However, the alternative to the Stability Pact is equally repellent: continued conflict, more casualties, more internally displaced people and refugees. This makes it all the more important that all concerned should put in extra efforts to make the concept and principles of the Pact a reality.

Notes

1 See the *International Conference on Peace, Security, Democracy and Development in the Great Lakes Region, Statement of Principles, 1st Heads of States and Government Summit, Dar es Salaam, 20 November 2004, Draft Declaration on the Consolidation of Security, Stability and Development in the GLR.*