

CONFLICT TRENDS

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CONTENTS

EDITORIAL

2 by Vasu Gounden

FEATURES



3 **Resolving Land Disputes in Burundi**

by Jenny Theron



11 **Effectively Confronting a Regional Threat: Somali Piracy**

by Brian Wilson



19 **The Challenges of Small Arms and Light Weapons in Africa**

by Rachel Stohl and Doug Tuttle



27 **Explaining the December 2008 Military Coup d'État in Guinea**

by Issaka K. Souaré

34 **Migration and Xenophobia in South Africa**

by Christy McConnell

41 **Reconciliation, Truth and Justice: Confronting the Dilemmas**

by Tendaiwo Peter Maregere

48 **Questioning Reintegration Processes in Northern Uganda**

by Grace Maina

BOOK REVIEW

55 **The Resolution of African Conflicts: The Management of Conflict Resolution and Post-conflict Reconstruction**

by Sadiki Koko



EDITORIAL

BY **VASU GOUNDEN**

In the last nine months, there have been several major armed crises in the world. These crises included the massive onslaught of Russian forces against Georgian forces, the Sri Lankan government forces against the Liberation Tigers of Tamil Eelam (LTTE) rebels, Israeli forces against the forces of Hamas, and the Democratic Republic of the Congo (DRC) government forces against the National Congress for the Defence of the People (CNDP) forces of rebel leader, General Laurent Nkunda. These crises do not signify a good beginning to the year 2009, nor are they positive indicators of – and for – conflict resolution.

Each of these cases have been characterised by a significant number of casualties, and none of the conflicts – except for that involving the DRC – seem any closer to being resolved. On the contrary, these onslaughts may have served to harden attitudes and entrench the positions of the hardliners on all sides. This means that prospects of resolving these conflicts are fading, and we will likely be facing protracted conflicts in these regions.

The DRC, however, may be a notable exception. The reason for this is the major step that was taken by the governments of Rwanda and the DRC to negotiate their differences. The government of Rwanda accused the DRC government of arming members of the former Armed Forces of Rwanda, who allegedly committed genocide in Rwanda and then fled to the DRC. The DRC government, on the other hand, accused the Rwandan government of arming General Nkunda's forces. Both governments denied the respective accusations. By means of negotiations in December 2008, the two governments agreed to launch joint operations to disarm both groups of armed insurgents.

Although the agreement between the governments of Rwanda and the DRC involves a military offensive, it is based on a political solution with a common purpose. It is underpinned by the resolve of two pragmatic leaders, who have waged war previously and have experienced the devastating

effects of war on their economies. Both countries are currently pursuing ambitious development agendas from very low economic bases. Any further disruption of their economies now will plunge them into deeper crises and prolong their development plans by several decades.

Pragmatic solutions that are based on mutual benefit, interests and needs are necessary today. In the current global economic crisis, the world cannot afford to resort merely to costly military means to resolve conflicts. Our first response must be to engage in dialogue and to seek political solutions. Military interventions, if at all necessary, must complement dialogue and political solutions.

It is, therefore, refreshing to observe the United States' (US) new policy commitment to move away from military solutions as a first response, and towards dialogue and political solutions instead. There is no doubt that the US is a major participant in the global military industry – as a protagonist in conflicts like those in Iraq and Afghanistan, or as a supplier of weapons to countries such as Israel. The current rapprochement between Russia and the US also bodes well for global stability, since Russia is also a major supplier of weapons in the world, as well as a protagonist in regional conflicts.

Such efforts must also be complemented by other major global players, such as China and India, so that there is a global reduction in arms manufacture and supply, armed conflict, and armed or military interventions, and a greater emphasis placed on dialogue instead. This requires that there be a renewed and genuine global commitment to dialogue, including providing financial resources and skilled personnel who are capable of promoting and facilitating dialogue around the world. ▲

Vasu Gounden is the Founder and Executive Director of ACCORD.

RESOLVING LAND DISPUTES IN BURUNDI

WRITTEN BY **JENNY THERON**



REUTERS / THE BIGGER PICTURE

Burundi: History and Context

Burundi is a small landlocked country in central Africa with a population of approximately eight million people. In the 1890s, the independent kingdom became a German protectorate until the First World War, when it came under Belgian authority. In 1962, Burundi gained its independence, but the constitutional monarchy was abolished four years later with the arrival of the republican system. Since the country's independence, it has experienced multiple conflicts between both ethnic groups and political factions. In summary, half a million people died during the crises of 1965, 1972, 1988, 1991 and 1993. The greatest number of deaths – approximately 300 000 – was a result of the crisis that followed the assassination of the first democratically elected president, Melchior Ndadaye, in 1993. In 1996,

the Arusha negotiations commenced and included the government of Burundi and various armed and unarmed groups, and opposition parties.¹ These negotiations resulted in the signing of the Arusha Peace and Reconciliation Agreement for Burundi (hereafter referred to as “the Arusha Agreement”) in August 2000, followed by the establishment of the Transitional Government of Burundi. In 2005, democratic elections were held in Burundi and Pierre Nkurunziza, leader of the former armed movement, the National Council for the Defense of Democracy – Forces for the Defense of

Above: Land is an important socio-economic asset in Burundi, since access to it is often linked to wealth and survival.



Land disputes occur when returnees arrive in their home countries to find that their land and properties have been occupied by others.

Democracy (CNDD-FDD) – was eventually inaugurated as the president of Burundi. Since the signing of the Arusha Agreement, the Transitional Government and the current government have signed additional ceasefire agreements with the remaining armed movements. Burundi has now taken considerable steps towards becoming a post-conflict country.

In general, countries attempting post-conflict reconstruction and peace consolidation face a number of obstacles, including land-related challenges. Burundi is no exception. This article examines the land conflict challenges in post-conflict Burundi and explores the various initiatives underway to address this issue.

Post-conflict Land Issues

The importance of land should never be underestimated. In many societies, especially poorer ones, land is a socio-economic asset, since access to it

is often linked to wealth and survival. As a result, land and its significance is frequently an important issue in widespread violence, as well as a critical element in peacebuilding and economic reconstruction in post-conflict situations. Land-related challenges in post-conflict environments often occur when returnees (former refugees and displaced people) find their properties and land occupied by individuals or groups. In order to consolidate peace, it is of utmost importance for these challenges to be clearly understood and successfully addressed.²

In Burundi, conflict resulted in refugees fleeing to neighbouring countries, especially Tanzania. More specifically, the 1972 crisis led to between 200 000 and 300 000 people fleeing the country, while the 1993 crisis led to approximately 400 000 people fleeing Burundi.³ The signing of the Arusha Agreement, followed by the establishment of the Transitional Government, resulted in a more secure and stable

situation in Burundi. Accordingly, in 2001, spontaneous repatriation was noticeable, while in 2002 the United Nations High Commissioner for Refugees (UNHCR) commenced the facilitation of repatriation of willing refugees from refugee camps in western Tanzania. In June 2006, the UNHCR began promoting repatriation. From 2002 to 2008 the UNHCR, in collaboration with partner organisations, repatriated 473 865 refugees from Tanzania back to Burundi, with another 263 496 remaining outside the country⁴

Once back in Burundi, returnees have to deal with issues relating to reintegration and reconciliation including, for many, the challenge of reclaiming their land. Land in Burundi is a limited commodity and of extreme importance, given that approximately 90% of Burundians are dependent on land since they earn their living through either agriculture or livestock. In general, there are limited opportunities for non land-based work, especially in rural areas where such opportunities are basically non-existent. Land, therefore, represents survival for many Burundians.

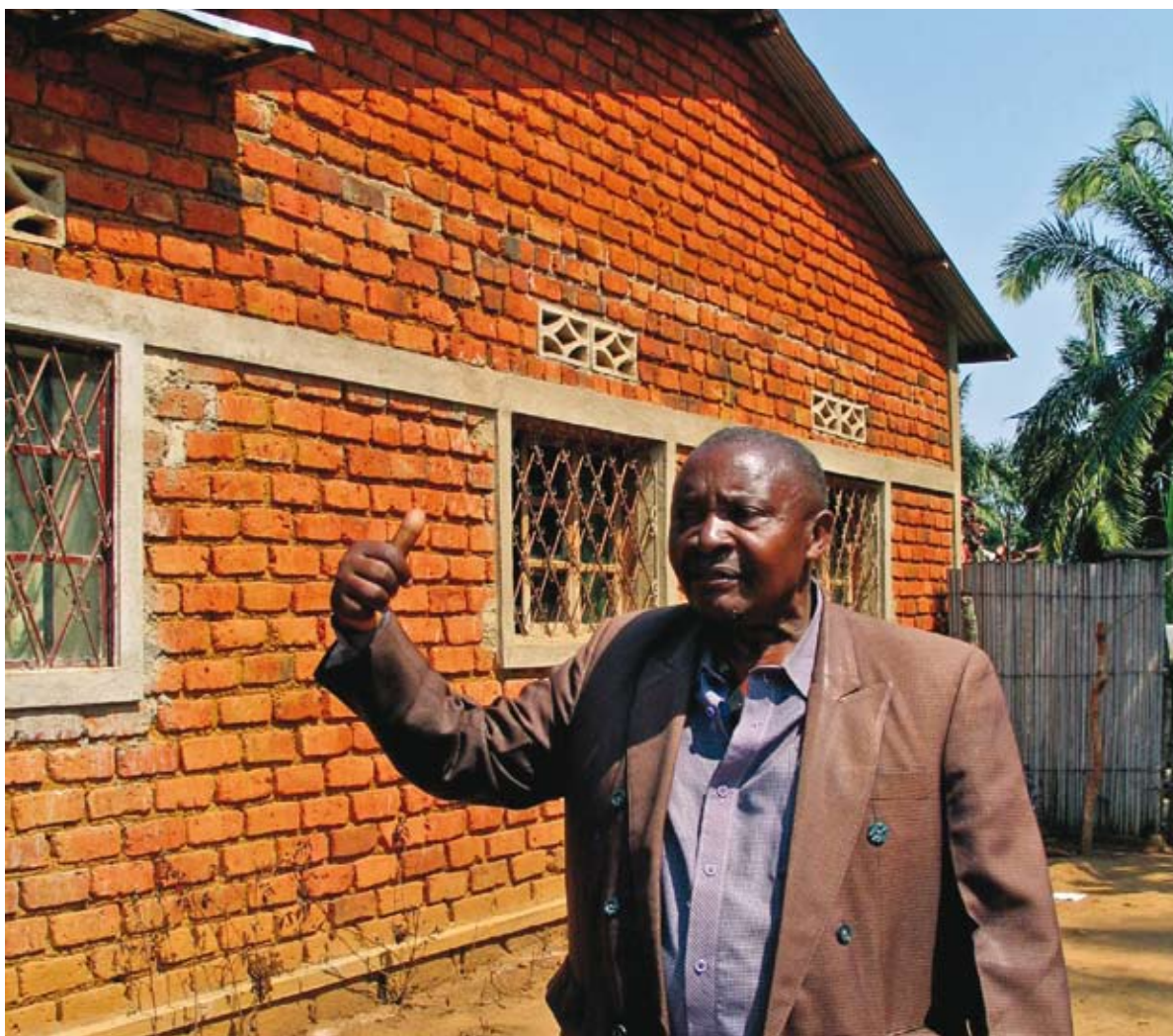
The population density in Burundi is 250 persons per square kilometre (km²), increasing to over 400 persons per km² in arable areas, while the population growth rate is 3.4%.⁵ Consequently, in Burundi a high population density with an agriculture-based economy results in the over-exploitation of land, soil degradation and crop disease. Land, therefore, is not only considered to be extremely valuable, but disputes relating to land are frequent, since a shortage of land makes acquiring or claiming back land extremely difficult for returnees and other vulnerable groups.⁶ If a large number of returnees are not able to reclaim their land and other properties, their frustrations could lead to violent actions, or the politicising of the land issue in the context of the upcoming 2010 elections.

The importance of returnees being able to reclaim their land was acknowledged by the Arusha Agreement in 2000, when it included a section that clearly states: "All refugees and/or *sinistrés* must be able to recover their property, especially land".⁷ In order for returnees to be reintegrated successfully



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Burundian refugees returning from Tanzania wait to register for identity cards at a transit camp in Mugano, Burundi.



A man gestures in front of his house that was taken by his former neighbours, in Muraga village, Burundi.

into their host communities in Burundi, they need to be able to recover and own properties that were left behind when they fled the country. This would provide them with the opportunity to participate in the country's social, economic and political life and towards the consolidation of peace in the country.

There are various obstacles to returnees being able to reclaim their land and/or other properties. In general, these can be summarised as follows⁸:

- Some returnees who left the country in 1972 found that their land and/or other properties were expropriated, redistributed or occupied. In such cases, they often have difficulty reclaiming their land, for two reasons. First, they do not have witnesses to verify that the relevant property or land belongs to them. Witnesses play an important role in land disputes since, in 1972,

official ownership documents were not yet readily available. Second, the Arusha Agreement indicates that all refugees must be able to recover their property. However, this is not always possible due to, for example, the Burundi Land Code of 1986.⁹ This code indicates that if land is owned (or occupied) by someone for longer than 30 years, then the occupant or new owner can become the legal owner of the land. Refugees who left Burundi in 1972 often only return to Burundi after more than this period of three decades. Reclaiming their land can then become problematic if the land has been occupied or owned by a new owner for more than 30 years.¹⁰

- Some returnees who left the country in 1993 found that their land and/or other properties



Most Burundians are dependent on land as they earn their living through agriculture or livestock.

are occupied, or boundaries were moved during their absence. In the majority of cases, the new occupants tend to be neighbours or family members. The challenge in these cases is that often there is a lack of evidence of original ownership. However, the cases concerning the 1993 crises returnees tends to be less complicated than the cases concerning the 1972 crises returnees, due to the time difference.

- Some women returnees who head households face obstacles in claiming land previously owned by their families, due to traditional patriarchal social views as well as administrative difficulties resulting from a lack of implementation of inheritance rights for women.

Resolving Land Disputes

If a returnee wishes to reclaim their land, there are four options available to them:

- 1) submission of their case to the justice system (courts);

- 2) submission of their case to the *Bashingantahe* institution (traditional mechanism);
- 3) submission of their case to the National Commission for Land and Other Properties (administrative authority); and
- 4) submission of their case for mediation to non-governmental organisations (NGOs).

The Justice System: Courts

Returnees have the option of submitting their case to the local courts in Burundi. At the time of writing, approximately 90% of cases in courts and tribunals in Burundi were related to land issues.¹¹ However, this option is usually only viable for those with sufficient financial resources. Should one wish to submit a case to court, one would have to pay approximately US\$2 to submit a case to the lower court, and US\$4 to appeal a decision at a higher court.¹² However, in cases where returnees can obtain official documentation from the communal administrator indicating that they are



Some land disputes are settled through traditional *Bashingantahe* hearings, where an organised body of elders can determine a satisfactory solution for all.

considered vulnerable persons¹³, then the fees will be waived. Travel costs to get to the local administration will still have to be incurred, though. The returnee would also be expected to incur travel costs, since the courts are centred around developed areas. Legal representation would also increase expenses for the returnee.¹⁴ Since the majority of the population survives on less than US\$1 per day, this is considered a significant obstacle for many. In cases involving returnees who left more than 30 years ago, and who are facing the state in court, they experience the “power” of the state, when it applies pressure on the court to rule in favour of the state rather than the returnee. In addition, court procedures are extremely time-consuming, due to an overload of cases as a result of the legal system in Burundi being weakened by the numerous crises the country experienced.

The benefit of submitting a case to the courts is that the decision taken by the courts is legally binding. This tends to be stronger in assisting the returnee with the implementation of the court’s decision. In addition, should the court rule in favour of the returnee, the returnee is usually able to easily register his or her property, based on the court’s decision.

Traditional Mechanisms: The *Bashingantahe* Institution

Traditionally, the *Bashingantahe* was seen as an organised body of “wise” men, well-known for their sense of truth, justice and responsibility for the overall good. Some of their main roles included the peaceful settlement of disputes, as well as reconciliation within communities. Unfortunately, due to colonialism and the political, social and economic crises Burundi has experienced, the credibility of this institution has been weakened. Even though it is well-known, accessible and provides free and “fast” verdicts, the challenge with using this traditional mechanism is that it is now often corrupt. A member of the *Bashingantahe* can, for example, request a bribe in order to rule in favour of one party. In addition, decisions taken by the *Bashingantahe* are not legally binding, and can be challenged in court. Despite these challenges, some community members still submit their cases to this institution, which indicates that there is still respect for this traditional mechanism.¹⁵ Returnees with land disputes can choose to make an appeal to the *Bashingantahe* where the expectation is that members of the institution will determine a solution that is satisfactory to all. At the time of writing, the

majority of cases being submitted to the institution concerned land.¹⁶ After a case has been submitted, the *Bashingantahe* will then summon the other party or parties to the conflict to come and present their case. Once the case has been concluded, the solution is put on paper and a copy given to each party involved. However, should one of the parties not agree with the solution, they can submit the case to court. Decisions taken by the *Bashingantahe* are therefore not legally binding.

At the time of writing, rehabilitation initiatives were underway to help restore the credibility of the *Bashingantahe*. Initiatives conducted or underway include, for example, the coordination of activities relating to the identification of the traditionally invested *Bashingantahe*, conducted by the United Nations Development Programme (UNDP); the establishment of the new National Council of *Bashingantahe*, with support from UNDP; and seminars held by the United Nations Educational, Scientific and Cultural Organisation

refer the case to the courts. In addition, the CNTB has the power to make recommendations to the government of Burundi to compensate a person; for example, if their land was taken illegally by a local administration. When having to choose between submitting their cases to the courts or the CNTB, returnees often choose the CNTB as opposed to the courts, since it handles cases free of charge. In addition, CNTB is expected to be less time-consuming than the courts in dealing with cases. In reality, however, the CNTB faces some challenges in completing its responsibilities. These are mostly due to a lack of resources in comparison to the needs on the ground, which often results in cases being more time-consuming to resolve than originally expected.

Meditation: Non-governmental Organisations

Should they so choose, returnees with land disputes have the option of submitting their cases to mediation. Various NGOs that are present in Burundi offer mediation

TRADITIONALLY, THE *BASHINGANTAHE* WAS SEEN AS AN ORGANISED BODY OF “WISE” MEN, WELL-KNOWN FOR THEIR SENSE OF TRUTH, JUSTICE AND RESPONSIBILITY FOR THE OVERALL GOOD

(UNESCO). Finally, according to the president of the National Council of the *Bashingantahe* during 2008, approximately 500 members of the *Bashingantahe* were removed from service in the institution based on negative behaviour, including corruption. This indicates the commitment to rehabilitate the *Bashingantahe* and to restore this mechanism’s credibility.¹⁷

Administrative Authorities: National Commission for Land and Other Properties

In response to the challenge of land disputes, the government of Burundi established the National Commission for Land and Other Properties (CNTB) under the office of the first vice-president in May 2006. The CNTB is charged with, among others, solving disputes relating to land and/or other properties; assisting vulnerable people to reclaim their land and/or other properties or to obtain compensation where their land and/or other properties have been destroyed; and updating the inventory of state-owned lands; and so on.¹⁸ The CNTB consists of three commissions: communal, provincial and national. Cases are first submitted to the communal commission, which then attempts mediation. Should the mediation fail, the case will then be sent to the provincial commission, which then also attempts mediation. Should mediation succeed, parties to the conflict sign a legally binding agreement. If mediation does not succeed after an attempt by the provincial commission, the CNTB can

services to returnees to settle land disputes. If one party to a dispute submits a case to mediation, the other party will then be invited to join the mediation. If both parties agree to mediation as a medium for resolving their dispute, then the mediation process will commence. NGOs offering mediation services to vulnerable communities in Burundi include, but are not limited to: The African Centre for the Constructive Resolution of Disputes (ACCORD), The Norwegian Refugee Council, and the Burundi Women Lawyers Organisation (AFJB).

Mediation is considered a viable option for resolving land disputes, since it tends to be less time-consuming and is easily accessible to beneficiaries in comparison with the courts. For example, since ACCORD’s Legal Aid Clinics are mobile, they travel to the communities to conduct mediations rather than the communities having to incur travelling costs. This, in addition to the fact that the mediation services are offered free of charge, results in mediation being a less expensive and more attractive option than judicial institutions. Mediation also promotes reconciliation, since the parties to the dispute reach their own mutually acceptable agreement that is documented and signed in a legal contract. Since the agreement is mutually acceptable by the disputing parties, it is often easier to implement in the spirit of goodwill than a decision taken in court, which tends to indicate one party as the winner and the other as the loser. Finally, NGOs such as ACCORD are considered impartial by both the

administration and community members and, based on their track records in the country, such NGOs have gained credibility.

These four land dispute resolution mechanisms in Burundi work in alignment with each other, rather than against each other. For example, cases not considered appropriate for mediation by ACCORD are referred to ACCORD's partner organisation *Avocats Sans Frontières* (ASF), or to the CNTB, or to courts. In turn, for example, ASF and local administrative authorities refer individuals to ACCORD for mediation. ACCORD also includes members of the *Bashingantahe* as part of community leaders in its capacity-building training, focusing on conflict management skills and legal matters including land law, while ASF provides capacity-building opportunities for judicial authorities. All these initiatives are faced with a greater number of cases than they can currently process, once again indicating the magnitude of the land dispute challenge in post-conflict Burundi.

Looking Forward

There is clearly an overload of land dispute-related cases in post-conflict Burundi, and a clear need for the existing resolution mechanisms to be further strengthened to continue their work. In addition, there is a need to build sustainable resolution skills, such as mediation within communities, to enable them to self-manage their conflicts. This will assist in decreasing the overload of cases experienced by the current dispute resolution initiatives, as well as ensuring that communities are able to continue to resolve and manage conflicts well after the CNTB and international NGOs, such as ACCORD, complete their work in the country.

The issue of land in Burundi is linked to the challenge of the country having an agriculturally-based economy in combination with a high population density and a fast growing population. Therefore, even though the current initiatives are addressing the issue of land conflict at an individual level, there is a further need to address these related challenges to land conflicts. First, the fact that the economy is agriculturally based needs to be reassessed. There needs to be opportunities for livelihoods and survival that are not only associated with land. Second, initiatives such as family planning education and campaigns should be undertaken to influence the population growth constructively. Considering the high population density and the fact that thousands of refugees still remain outside the country expecting to return in the near future, population growth will have to be addressed.

In conclusion, the processes being undertaken by the government of Burundi and other stakeholders to address land-related challenges should be complemented by other relevant initiatives to resolve the land disputes – not only at an individual level, but also at a national level. ▲

Jenny Theron coordinates ACCORD's Burundi Operations and is based in Bujumbura, Burundi.

Endnotes

- 1 All historic data adapted from Eggers, Ellen (1997) *Historical Dictionary of Burundi*. London: The Scarecrow Press, Inc.
- 2 USAID (2005) 'Land and Conflict: a Toolkit for Intervention', Available at: <http://www.usaid.gov/our_work/cross-cutting_programs/conflict/publications/docs/CMM_Land_and_Conflict_Toolkit_April_2005.pdf> p. 2–10 Accessed on: 18 February 2009.
- 3 UNHCR/WFP (2007) 'Report of the Joint Assessment Mission of Burundian Returnees, 7–11 May 2007', Available at: <<http://www.reliefweb.int/rw/rwb.nsf/db900sid/LSGZ-743CJL?OpenDocument>> Accessed on: 18 February 2009.
- 4 UNHCR Burundi (2008) *Fact Sheet: 31 December 2008*. Bujumbura, Burundi.
- 5 UNHCR/WFP (2007) op. cit.
- 6 For the benefit of simplifying the context of this article, reference will only be made to returnees. However, in general, it is important to acknowledge other vulnerable groups including, but not limited to, internally displaced groups and women-headed households.
- 7 Arusha Peace and Reconciliation Agreement for Burundi (2000) *Protocol IV: Reconstruction and Development*, Chapter 1, Article 8.b. p. 81.
- 8 This assessment of challenges is based on the experience of ACCORD's Legal Aid Clinic Project.
- 9 *République du Burundi* (1986) *Loi Portant Code Foncier du Burundi. Titre II*, Chapter I, Section I, Article 29.
- 10 An example of such a situation could be where the new owner, without knowing, purchased property from someone who did not have the right to sell it. In this case, the returnee can try to make a case against the person who sold the land illegally, but the returnee cannot make a case against the new owner.
- 11 Clemesac, Nicolas (2007) 'Repatriation and Land: Land Disputes Need to be Settled with Haste'. *Servir: Jesuit Refugee Service*, no. 41, pp. 6-7.
- 12 *Ibid.*
- 13 There is no law to guide the communal administrator in terms of who would qualify to be a vulnerable person. It is therefore up to the discretion of the communal administrator. In general, however, vulnerable persons would include, but are not limited to, internally displaced persons (IDPs), returnees living in transit camps, war orphans, and so on.
- 14 There are NGOs such as *Avocats Sans Frontières* (ASF) that assist returnees by providing them with legal representation free of charge.
- 15 Nindorera, Louis-Marie. (1998) 'Keepers of Peace: Reviving the Tradition of *Bashingantahe* in Burundi', *Online Journal of Peace and Reconciliation*, Available at: <<http://www.trinstitute.org/ojpcr/tracktwo3.htm>>, Accessed on: 5 June 2008.
- 16 Interview conducted with Ambassador Balthazar Habonimana, president of the National Council of the *Bashingantahe*, 19 February 2009, Bujumbura, Burundi.
- 17 *Ibid.*
- 18 Summarised from CNTB (2008) *Commission Nationale Des Terres et Autres Biens: Deux Ans Apres*, Bujumbura, Burundi.



EFFECTIVELY CONFRONTING A REGIONAL THREAT: SOMALI PIRACY

WRITTEN BY **BRIAN WILSON**

The Somali piracy threat is not yet over. Vessels are still being attacked, warships from more than a dozen nations are on station, and some crews are taking alternate routes to avoid the Horn of Africa. But a promising trend is emerging, both in the waters and diplomatically, to confront this maritime crime. In January 2009, of 18 piracy attempts, only three were successful. In 2008, however, Somali pirates achieved considerably better results, boarding about a third of the ships they attacked.¹ The recent positive developments come on the heels of a surge in piracy not seen in generations. Many years from now, the period November 2008 to January 2009 will be remembered as the decisive months in the battle to defeat Somali

pirates. What exactly occurred in that period is a lesson in military operations, political initiatives and international partnering.

Piracy gained worldwide interest in 2008. Of the almost 300 ships that were attacked, 111 were in the Somali area.² Somali pirates operated in and around the Gulf of Aden, which links trade between the East and

Above: The Hong Kong flagged merchant ship *M/V Overseas Hercules* used fire hoses as a countermeasure against a possible pirate attack in the Gulf of Aden, in December 2008. No attack was made on the ship.



The *MV Sirius Star*, a Saudi supertanker, was hijacked by Somali pirates 450 nautical miles southeast of Mombasa, Kenya, in November 2008.

West. The ships that were successfully hijacked carried oil, military weapons and chemicals; even luxury yachts were hit. Several mariners were injured or killed and the global merchant shipping supply chain was impacted, with raised insurance premiums (in some instances, increasing from US\$500 to US\$20 000 per transit). Odfjell, a Norwegian shipping group, suspended transits through the area due to concerns over safety, and others are considering forgoing the Suez Canal, sending ships around the Cape of Good Hope. In the event of alternate routing, shipping costs would increase, as vessels would incur an additional 10 to 14 days of transit time. Revenue for the neighbouring Suez Canal dropped from US\$426 million in 2007 to US\$391 million in 2008, as a result of piracy and the financial meltdown.

Piracy often occurs when there is poverty and a weak or non-existent government. Maritime crime spiked off the Somali coast in 2008, in part because of the dire economic situation within that country. But the recent events were the culmination of years of inattention,

desperation and lawlessness occurring in an area bordering a globally vital shipping route.³ Before 1990, piracy was a fairly insignificant occurrence, but a more structured form of piracy emerged in the mid-1990s when armed groups patrolled the 200 nautical mile exclusive economic zone of Somalia, claiming they were the authorised “coastguard” charged with protecting Somalia’s fishing resources. Vessels were attacked for purportedly poaching in this area, with ransom demanded for their release. Soon it became impossible to distinguish between vessels that were seized for fishing illegally, and vessels that were simply seized. These practices slowly expanded after 2000, around which time any vessel that sailed near Somalia was at risk of being hijacked. By 2005, the actions of Somali pirates reached “outlandish proportions”, with ships being attacked seemingly at random.⁴

A long-term solution to the maritime violence in the Gulf of Aden requires stabilising Somalia. A Somali remarked that, “Piracy will not stop unless we get a

A MORE STRUCTURED FORM OF PIRACY EMERGED IN THE MID-1990S WHEN ARMED GROUPS PATROLLED THE 200 NAUTICAL MILE EXCLUSIVE ECONOMIC ZONE OF SOMALIA, CLAIMING THEY WERE THE AUTHORISED “COASTGUARD” CHARGED WITH PROTECTING SOMALIA’S FISHING RESOURCES

government.”⁵ While regional and international efforts are currently underway to improve the conditions within Somalia, progress will take several years. The average annual income in Somalia is estimated to be US\$650.⁶ A single piracy attack can yield US\$10 000 – perhaps more – for a working-level pirate. Because of a lack of economic options, more than a thousand Somali men are associated with organised criminal gangs that are engaged in piracy.⁷ A Somali pirate said, “We have the best way of life. We drive in white SUVs, we enjoy driving them and there is absolutely no difficulty in our life.”⁸

The pirates’ achievements in 2008 can also be attributed to securing the latest technology, operating in an enormous geographic area with multiple targets, and having no authority on land to challenge them. At its most narrow point (Bab-el-Mandeb Strait), the Gulf of Aden is less than 20 miles wide. The surrounding area, however, comprises more than two million square miles of ocean. Pirates have exploited this environment, attacking ships on well-established routes. Their actions have evolved somewhat over the years, and now include “staging dummy attacks to lure in warships while another gang hits the real target, further away... [and calling] ... in false distress signals to confuse shipping”.⁹ The 2008 hijacking of the *Sirius Star* – a supertanker carrying two million barrels of oil – which occurred 450 miles from the coast, underscores the vulnerability of even large ships that are far from shore. While the *Sirius Star* was released in January 2009 after a ransom payment¹⁰ of US\$3 million¹¹, many others remain hijacked.

Prior peaks in piracy include the Barbary pirates, who operated from the Ottoman principalities in North Africa in the 17th to the 19th centuries. Much like the devastating economic impact inflicted by the Barbary pirates, present-day piracy is estimated to cost between US\$13 billion and US\$15 billion every year, and could cost substantially more in coming years.¹² In addition to the personal danger, piracy threatens property and ships, endangers critical sea lines of communication and the free flow of commerce, and is regionally destabilising. Piracy is also corrosive to political and social development, thwarting economic growth.

Ship protection – short of having military or civilian assets on board or in the vicinity – has spawned substantial private industry research and development. When pirates launched rocket-propelled grenades into a

luxury cruise liner in 2005, the *Seabourn Spirit* directed earsplitting noise from a long-range acoustic device in the pirates’ direction, combining it with evasive action to flee effectively. More recently, five attacks off the Somali coast were disrupted because of evasive ship action and the use of fire hoses, according to a statement from the United States (US) Fifth Fleet. In addition to the use of noise and pressure hoses laden with water, companies are working quickly to fill an emerging security demand. A Netherlands firm has developed a 9 000 volt electric fence for ships, but it may not be a good fit for those with flammable cargo. Another firm is developing a “holographic radar”, with round-the-ship capability that could complement other on-board radars.¹³ Technology is important, but it was ultimately partnering and



Crew members leave the *Ponant* luxury yacht after being released by Somali pirates (April 2008).

REUTERS / THE BIGGER PICTURE



Members of the German Navy, from frigate *Rheinland-Pfalz*, detain pirates in the Gulf of Aden after they tried to attack a German merchant ship (March 2009).

responsive international action that reduced the recent Somali threat.

Piracy is an illegal act of violence, detention or depredation committed for private (rather than political) ends by the crew or passengers of a private ship or aircraft against another ship, persons or crew, and committed outside of a state's territorial waters. Inside territorial waters, such crimes constitute armed robbery at sea, and are the responsibility of the coastal state. Thus, "armed robbery at sea" in territorial waters can, a few metres away, become "piracy". Because most of the ocean's surface is not under any individual state's jurisdiction, effectively safeguarding it poses multiple operational and legal challenges.

The United Nations (UN) Security Council addressed many of the challenges associated with counter-piracy operations through the adoption of four resolutions (1816, 1838, 1846 and 1851) in 2008. These resolutions prevented pirates from using the territorial waters off Somalia to avoid capture, urged states to deploy naval forces to the area, strengthened the legal authorities to prosecute pirates and improved

collaboration and cooperation, particularly with regard to the disposition of captured pirates. As a result of the direction provided by UN Security Council Resolution 1851, an international contact group met at the UN on 14 January 2009 to address collaborative efforts to repress piracy. Representatives from Djibouti, Egypt, Kenya, Oman, Saudi Arabia, Somalia and Yemen, among other countries, attended.¹⁴ This group, which will meet again in March 2009, will focus on improving operational and intelligence support to counter-piracy operations; establishing a counter-piracy coordination mechanism; strengthening judicial frameworks for the arrest, prosecution and detention of pirates; strengthening commercial shipping self-awareness and other capabilities; pursuing improved diplomatic and public information efforts and disrupting pirates' financial operations. The group builds upon a UN-sponsored study in November 2008 that examined Somali piracy. Separately, in January 2009, a Code of Conduct was adopted at an International Maritime Organisation (IMO)-convened regional meeting in Djibouti to address piracy.¹⁵ This landmark agreement covers collaborative



Suspected pirates keep their hands in the air as directed by sailors aboard a guided-missile cruiser in the Gulf of Aden.

operations, commitments to share points of contact for the dissemination of piracy repression information and the establishment of a Regional Training Centre, a Maritime Rescue Coordination Centre in Mombasa, a Sub-regional Coordination Centre in Dar es Salaam and a Regional Information Centre in Sana'a.¹⁶

That multiple efforts have effectively unfolded globally to address a common threat is impressive, portending greater maritime coordination. While much more is expected to confront piracy and the situation on the ground in Somalia, five "lessons learned" have emerged to reach this encouraging point.

Lesson One: Local Threats Can Become Global Threats

Somalia is a disaster, with crushing poverty and no functioning government or economy. For many years, the conditions within Somalia were considered a localised problem. That changed when desperate Somalis began looking to obtain money in any possible manner. The ships transiting the neighbouring Gulf of Aden would prove an attractive and lucrative option for pirates, altering the localised Somali plight to a global concern. More than 200 vessels a day pass within miles of this chaos, carrying cargo to the world. As the hijackings of

2008 illustrate, events in the Gulf – which included seized Russian tanks and ammunitions, chemicals and oil – affected almost every nation on earth.

Lesson Two: States Can Work Well Together to Confront a Common Threat

The two coalition forces that are operating in the Gulf, along with warships from several other nations, have provided a remarkable military presence. Collectively, they are not operating under the command of one person or one unit, but there is a united effort. November 2008 was a particularly productive month for pirates, with multiple seizures. But it was also a month where naval assets ramped up efforts to confront the pirates, and stands as a turning point in the battle, with British, Indian and Russian warships successfully preventing hijackings. While the oceans are different to land operations, the combination of force in the Gulf may serve as a template for future action. Warships have significantly reduced the Somali piracy threat.¹⁷ Capacity building takes place in many forms, with an emphasis on information-sharing, communication and improving maritime domain awareness. Thus, even though India or China, for example, are not part of the US 5th Fleet's Combined Task Force 151 or the European Union's (EU) Operation Atalanta, their presence,

operations and commitment are crucial to the effort. In other words, the mission can still be accomplished without a unity of command. Capacity building is taking place in other venues as well. An EU website for ship owners to share information has garnered significant industry support.¹⁸ Bilateral accords for prosecution assistance – such as between the United Kingdom and Kenya, and the US and Kenya – are also expanding capability, through the forging of new partnerships.

Lesson Three: International Organisations are Relevant, Necessary Institutions

As piracy continued to escalate off the Somali coast in 2008, states looked to the UN for overarching guidance and authority. Its last two resolutions – 1846 and 1851, both adopted in December 2008 – provided considerable legal authority, both for prosecutions and in potential land engagement in Somalia. The UN did not direct military force, nor did it compel states to prosecute suspected pirates. UN Security Council member states did, however, provide legal authority and call on states to support increased investigative and judicial action. Some – notably Kenya – have already been significantly engaged in repression efforts, and many have been conducting operations for years but, for others, the 2008 UN action was necessary for expanded contributions. With so many nations, organisations and efforts in progress to repress piracy, an obvious concern is that anything “new” does not duplicate or render useless action already underway, or establish another bureaucratic infrastructure with tremendous resource demands. UN action appears to be sensitive to that concern. As new frameworks and creations come into existence in 2009 – such as the “contact group” that met in January, and the development of a Regional Coordination Centre – they can trace their origins to action taken in the period of November 2008 to January 2009.

Lesson Four: The Enduring Value of the Rule of Law

As more warships converged on the Gulf of Aden, it became apparent that just stopping an interdiction and detaining pirates was not the end of the mission. While the authoritative 1982 Law of the Sea Convention and customary international law provide ample authority for a nation to take action to stop an act of piracy, many do not have domestic laws to support prosecutions. Thus, while piracy is a universal crime that every state *can* prosecute, it is unlikely that a criminal trial will be initiated if there is not a national law proscribing such conduct. Judicial capacity is, perhaps, the most important component of effective repression efforts. Some countries, like Spain, had laws, but removed them because of a decline in piracy in the last century. Other countries, such as Germany,

require that a victim be German, or that there be some relationship to their country. For nations conducting interdictions, pirates could sit on warships for weeks – or months – awaiting a disposition decision. In several instances, if there was not a viable prosecution option, the pirates’ weapons would be seized and the pirates would simply be returned to shore – essentially set free. This troubling outcome prompted the UN Security Council – in December 2008, through Resolution 1846 – to implore states to avail themselves of a 1988 maritime criminal law treaty to prosecute pirates. The Suppression of Unlawful Acts (SUA) Treaty has 149 parties and was created, in part, to criminalise acts that endanger the safe navigation of ships. In this regard, many elements of piracy and SUA overlap. As noted above, the UN Convention on the Law of the Seas (LOS) defines piracy as an illegal act of violence committed for private ends on the high seas. “The SUA Convention applies more broadly to acts of violence against ships regardless of the motive of the actor, but covers acts of piracy.”¹⁹ The SUA proscribes seizing a ship by force, threat or intimidation, among other things. The SUA Treaty obligates state parties to criminalise attacks against vessels and establish jurisdiction over such offences for ships flying their flag. “Leveraging states’ SUA obligations in conjunction with existing international law against piracy provides an effective legal framework to deliver an ‘endgame’.”²⁰ Whether it is SUA or some other domestic legislation, the focus on prosecuting pirates highlights the continuing value of the rule of law, and its import in military operations and in diplomatic efforts to resolve regional instability.²¹

Lesson Five: Piracy Can Never be Eradicated

As the past 2 000 years demonstrate, eliminating piracy fully is not possible, and thus should not be the goal. Much like crime on land, the primary aim should be to reduce, contain and punish perpetrators. Piracy is different to crime on the land, though – not just in its location, but in the laws that govern it and in its impact on the global supply chain. Approximately 80% of global trade moves by water. Ensuring that there is freedom of navigation and that sea-lanes are protected is a global imperative, whereas land transits are generally the responsibility of only the states involved. When piracy causes ships to take alternate routes that add days – and potentially millions – to their transit costs, multiple nations are affected. The recent focus on restoring order and stability on land will need regional support. Towards that end, regional action and initiatives are poised to become decisive force multipliers for developing maritime security in the Horn of Africa. And efforts by the International Maritime Organization, which has provided seminal guidance to states and the shipping industry for the past 25 years, must continue.



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Somali pirates were captured by French forces who came to the rescue of two cargo ships threatened in the Gulf of Aden.

A sustained reduction in piracy will ultimately require persistent political and economic commitments, enhanced judicial capacity and partnering. The powerful combination of military assets, the law and collaboration in a multinational context in the Horn of Africa has transformed repression efforts, and will serve as a model for subsequent international responses to areas of regional instability. ▲

Brian Wilson is a senior US Navy officer and lawyer. He served as an Oceans Policy Advisor in the Pentagon. The views presented here are those of the author and do not represent the official policy or position of the US Department of Defense.

Note from the Editor

In mid-April 2009, as *Conflict Trends* was going to press, an escalation in Somali piracy occurred. While a number of ships from various nations were seized, Captain Richard Phillips of the *Maersk Alabama* was rescued by US naval snipers in a dramatic operation during which three Somali pirates were killed. Following these recent events, the international response to the

piracy threat has been accorded even higher priority. Countries like Sweden joined the naval force in the Indian Ocean and the idea of maritime convoys was mooted to protect the transport lines.

Endnotes

- 1 Office of Naval Intelligence (ONI) 'Civil Maritime Analysis Department Worldwide Threat to Shipping Mariner Warning Information', 29 January 2009. In the period covering December 2008 to January 2009, there have only been five successful hijackings in the Horn of Africa, out of more than 30 attempts. Available at: <http://www.nga.mil/MSISiteContent/StaticFiles/MISC/wwtts/wwtts_20090129100000.txt> Accessed on: 10 February 2009; and Available at: <http://marad.dot.gov/news_room_landing_page/horn_of_africa_piracy/horn_of_africa_piracy.htm> Accessed on: 10 February 2009. See also International Chamber of Commerce (ICC) 'International Maritime Bureau's (IMB) Piracy Reporting Centre', released on 16 January 2009. Available at: <http://www.icc-ccs.org/index.php?option=com_content&view=article&id=332:imb-reports-unprecedented-rise-in-maritime-hijackings&catid=60:news&Itemid=51> Accessed: on 10 February 2009.
- 2 ICC 'IMB's Piracy Reporting Centre', op. cit.
- 3 "More than 3.3 million barrels of oil pass through the Gulf of Aden every day. This represents 4% of the world's total daily production and 12% of all the oil transported by water daily around the world. In addition, numerous other cargoes and

- container freight pass through the Gulf daily.” Testimony of US Maritime Administration Acting Deputy Administrator James Caponiti before US Congress (Sub-committee on Coast Guard and Maritime Administration of the Committee on Transportation and Infrastructure), 4 February 2009. Available at: <<http://transportation.house.gov/Media/File/Coast%20Guard/20090204/Caponiti%20testimony.pdf>> Accessed on: 10 February 2009.
- 4 Piracy Off the Somali Coast, workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia, Ambassador Ahmedou Ould-Abdallah, International Expert Group, Nairobi, Kenya, 21 November 2008.
 - 5 Hassan, Abdiqani (2009) ‘I’m a Successful Pirate’, *Pretoria News*, 20 January 2009, quoting Yassin Dheere, a 39-year-old Somali interviewed in Garowe. Available at: <<http://www.pretorianews.co.za/index.php?fSectionId=672&fArticleId=vn20090120063419175C65447>> Accessed on: 10 February 2009.
 - 6 Bunkall, Allistair (2008) ‘Pirate Town Lures Fortune-hunters’, *Sky News*, 20 November 2008. Available at: <<http://news.sky.com/skynews/Home/World-News/Somalia-Pirates-Town-Of-Eyl-Lures-Fortune-Hunters/Article/200811315155587>> Accessed on: 10 February 2009. See also Nordland, Rod (2008) ‘The Evil Solution’, *Newsweek* interview with Shamun Indhabur, “thought to be the leader of pirates who took the Faina and the Sirius Star”, December 2008. Said Indhabur: “In Somalia, all the young men are desperate. There is wide unemployment in the country, there are no sources of income.” Available at: <<http://www.newsweek.com/id/175980>> Accessed on: 10 February 2009.
 - 7 Hassan, Abdiqani (2009) op. cit. Somali Yassin Dheere stated, in part, that, “At the moment we have a new, active young generation which wants to take part in piracy. They mostly like money.”
 - 8 McKenzie, David (2009) ‘Exclusive: Pirate Tells How Comrades Drowned’, *CNN*, 12 January 2009, quoting Libaan Jaama. Available at: <<http://www.cnn.com/2009/WORLD/africa/01/12/somalia.pirates/>> Accessed on: 10 February 2009.
 - 9 Fraser, Christian (2008) ‘On Patrol with the Pirate Hunters’, *BBC News*, 21 November 2008. Available at: <<http://news.bbc.co.uk/1/hi/world/africa/7741706.stm>> Accessed on: 10 February 2009.
 - 10 Nordland, Rod (2008) op. cit. In an interview with pirate Shamun Indhabur, he said, “We get the money two ways. A boat takes the money from Djibouti, then a helicopter takes the money from the boat, then it drops the money in waterproof cartons on assigned [small] boats. Then we collect it, check if it is false or not, then we release the ship. The other way we get the money is a boat from Mombasa.”
 - 11 At least five pirates drowned while returning to shore (along with losing their share of the ransom, US\$300 000). The exchange of money for the release of the ship and crew was not well-received by all. Kenyan Foreign Minister Moses Wetangula said, “I wish to register our displeasure on the payment of ransom last week where the oil tanker was released. Paying encourages criminal acts and we do not support such initiatives.” ‘Kenya Slams Sirius Star Payment’, *Maritime Global Net*, 13 January 2009. Available at: <<http://www.mgn.com/news/dailystorydetails.cfm?storyid=9537&ttype=2>> Accessed on: 10 February 2009.
 - 12 Ryan, Margaret (2006) ‘Captain Counts the Cost of Piracy’, *BBC News*, 2 February 2006. Available at: <<http://news.bbc.co.uk/1/hi/world/africa/4669050.stm>> Accessed on: 10 February 2009.
 - 13 Emery, Daniel (2008) ‘Technology Sets Sights on Piracy’, *BBC News*, 18 November 2008. Available at: <<http://news.bbc.co.uk/1/hi/technology/7735685.stm>> Accessed on: 10 February 2009.
 - 14 The others included Australia, China, Denmark, France, Germany, Greece, India, Italy, Japan, Republic of Korea, Russian Federation, Spain, Turkey, United Arab Emirates, United Kingdom and the US, as well as observers from the African Union, European Union, International Maritime Organization, North Atlantic Treaty Organisation and the UN Secretariat.
 - 15 Representatives from Comoros, Djibouti, Egypt, Ethiopia, France, Jordan, Kenya, Madagascar, Maldives, Oman, Saudi Arabia, Seychelles, Somalia, South Africa, Sudan, the United Republic of Tanzania and Yemen, and observers from IMO member states, UN specialised agencies and non-governmental organisations. As of 30 January 2009, signatories to the agreement – known as the Djibouti Code of Contact – included Djibouti, Ethiopia, Kenya, Madagascar, the Maldives, the Seychelles, Somalia, Tanzania and Yemen. ‘Nine Countries Sign Agreements to Combat Africa Piracy’, *Voice of America*, 30 January 2009. Available at: <<http://www.voanews.com/english/mobile/displaystory.cfm?id=622971&metadataid=845>> Accessed on: 10 February 2009.
 - 16 International Maritime Organisation (2009) ‘High-level Meeting in Djibouti Adopts a Code of Conduct to Repress Acts of Piracy and Armed Robbery Against Ships’, press release, Available at: <http://www.imo.org/newsroom/main-frame.asp?topic_id=1773&doc_id=10933> Accessed on: 10 February 2009.
 - 17 Military officials have gained insight as a result of repression operations. The commander of Combined Task Force 151, Rear Admiral Terry McKnight, US Navy, said, “I think one of the lessons we’ve learned out here is the ‘golden 30 minutes’. If we can get a warship, a helicopter or a maritime patrol aircraft over to a vessel that is being pirated, there’s a pretty good success rate of the pirates going away. So we’ve got a lot of activity out here with helicopters and maritime patrol aircraft.” Scutro, Andrew (2009) *Anti-pirate Pioneers*. *Navy Times*, 9 February 2009, p. 8.
 - 18 European Union websites focusing on maritime security and piracy repression are Available at: <<http://www.mschoa.eu/>> and <<http://consilium.europa.eu/showPage.aspx?id=1518&lang=fr>> Accessed on: 10 February 2009.
 - 19 Testimony of Rear Admiral William Baumgartner, US Coast Guard, before US Congress (Sub-committee on Coast Guard and Maritime Administration of the Committee on Transportation and Infrastructure), 4 February 2009. Available at: <<http://transportation.house.gov/Media/File/Coast%20Guard/20090204/CG%20Testimony.pdf>> Accessed on: 10 February 2009.
 - 20 Admiral Thad H. Allen (2008) ‘Dealing with Piracy... What’s Your Endgame?’, *iCommandant: Web Journal of Admiral Thad Allen*, 3 December 2008. Available at: <<http://www.uscg.mil/comdt/blog/2008/12/dealing-with-piracywhats-your-endgame.asp>> Accessed on: 10 February 2009.
 - 21 The US Piracy Policy (2007) identified the rule of law as one of its priorities. That was reinforced in 2008, when the National Security Council released ‘Countering Piracy Off the Horn of Africa: Partnership & Action Plan’. Available at: <http://www.marad.dot.gov/documents/Countering_Piracy_Off_The_Horn_of_Africa_-_Partnership__Action_Plan.pdf> Accessed on: 10 February 2009.

THE CHALLENGES OF SMALL ARMS AND LIGHT WEAPONS IN AFRICA

WRITTEN BY **RACHEL STOHL AND DOUG TUTTLE**

REUTERS / THE BIGGER PICTURE



On 25 September 2008, approximately 50 gunmen boarded and captured the *MV Faina*, a Ukrainian vessel loaded with tanks, small arms and light weapons. The cargo ship was originally thought to be bound for Mombasa, Kenya, but the United States (US) Navy later revealed that the weapons were bound for rebel groups in Southern Sudan, for use in the raging Sudanese conflict. Released by hijackers more than four months later, the *MV Faina* symbolises the power, influence and consequences of small arms and light weapons throughout Africa. Indeed, these deadly weapons are fundamental to conflict, crime and violence throughout the continent. This article provides an overview of current small arms trends in Africa.¹ It examines the

sources of African weaponry, contemporary trends in conflict and crime, and discusses potential responses to the ongoing concerns surrounding the proliferation of small arms in Africa.

Sources of Small Arms

The 2003 Small Arms Survey estimates that there are fewer than 30 million firearms in sub-Saharan Africa.² While comparably a relatively small number (Europe is thought to have roughly 84 million and the US is

Above: Small arms are simple enough to use that small children can easily be moulded into effective soldiers.



In September 2008 approximately 50 gunmen boarded and captured the *MV Faina*, a Ukrainian ship loaded with tanks, small arms and light weapons.

thought to have nearly 300 million), these weapons have had a disproportionate affect on the continent. These deadly weapons have contributed to political instability and armed conflict, hindered economic development, empowered criminal groups and undermined societies.

Small arms and light weapons are sourced through various means and suppliers. According to the Small Arms Survey, at least 38 companies currently produce small arms in sub-Saharan Africa, with the largest production facilities located in more developed nations, such as South Africa. However, domestic manufacturing fails to satiate domestic demand. Thus, African countries rely on the thriving international small arms market to meet their needs. In 2006, the US alone transferred over US\$8.5 million worth of small arms into African countries. With small arms selling from a few hundred dollars to a few thousand dollars, depending on the model, the total reflects a significant number of weapons. A lack of transparency in the international small arms trade makes it impossible to quantify the value and sources of small arms sold to Africa accurately – but China,

France, Germany, Italy, Russia, the United Kingdom and the US are known as the major legal sources of African weaponry. However, the illicit trade is quite active in Africa, and anecdotal accounts now suggest that Russia has supplanted China as the main supplier of small arms to African arms dealers.

Craft production – the small-scale, manual production of crude weapons – has also proven to be a significant source of illicit weaponry in Africa. Analysts Matt Schroeder and Guy Lamb have documented that craft production in Ghana has the potential to yield up to 200 000 new weapons a year³ that could fuel criminal violence within Ghana, or be used in other regional conflicts and crimes.

In addition, grey market arms transfers – where arms brokers skirt international guidelines and national legislation to supply weapons to governments and armed groups – contribute significantly to conflict and crime in Africa. Arms brokers are private individuals or companies that facilitate arms agreements and transfers between suppliers and recipients in return for



Viktor Bout, arms supplier to some of the deadliest conflicts around the world, was arrested in Thailand and is awaiting extradition to the United States to face charges of supporting a terrorist organisation.

compensation. They are able to work in the margins of national and international regulation, and face little regulation themselves. Unregulated brokers have been blamed for providing weapons for some of Africa's bloodiest conflicts, in Sierra Leone, Uganda, Congo and Sudan.

Viktor Bout's story⁴ is representative of the shadowy world of today's arms brokers. For Bout, small arms were the currency and the commodity of trade, with deals involving drugs, diamonds and timber. Bout supplied some of the deadliest conflicts around the world and some of the world's worst dictators, and is accused of violating arms embargoes in Angola, Sierra Leone and Liberia. Bout lived freely and openly in Moscow for years, and his companies operated with impunity around the world. In March 2008, Bout was arrested in Thailand on charges of supplying arms to the Colombian rebel group, Revolutionary Armed Forces of Colombia (FARC). He now remains imprisoned in Thailand, awaiting extradition to the US to face charges of supporting a terrorist organisation.

Once on the continent, weapons are circulated through conflicts, leaving one conflict zone and entering another where demand is greater. In West Africa, the same weapons, and sometimes even the same soldiers, moved from one conflict to another – from Liberia to Sierra Leone, then to Côte d'Ivoire, and then to Guinea – during the decade and a half of conflict in the region. Weapons from Chad have been used in Darfur, while weapons in Somalia have originated from Djibouti, Ethiopia, Egypt, Eritrea and Libya, Uganda and Yemen. Stockpiles of Cold War weaponry are also readily available throughout the continent, as countries such as Angola and Mozambique were used as Soviet and US proxies during the Cold War.

An estimated 79% of small arms in Africa are in the hands of civilians.⁵ If lost or stolen, these weapons can easily flow into the black market and contribute to the vast number of unregistered, illicit weapons on the continent. In South Africa, between 2004 and 2006, over 15 000 registered firearms were reported lost or stolen each year (likely only a small percentage of actual loss



Insurgents take up positions with rocket propelled grenades as they fight with Ethiopian troops in northern Mogadishu (January 2009).

and theft), which contributes to illicit weapon availability.⁶ Between May 2006 and May 2007, the South African Police Service itself reported losing or misplacing nearly 4 000 firearms.⁷

Although much publicised, United Nations (UN) arms embargoes have been mostly ineffective in preventing weapons from reaching destinations on the continent. Schroeder and Lamb count 15 arms embargoes imposed on African states and/or rebel groups since 1992⁸, many of which have been ignored. UN expert groups have reported on significant violations of the UN Security Council-imposed embargoes, and have emphasised that the unabated flow of weapons to conflict regions is often due to government complicity. For example, the UN expert group report on Sudan highlights that the continued ability of rebel forces to fight against the government is, in part, due to the violation of the arms embargo. Reports by Human Rights First and Amnesty International⁹ have revealed that the Chinese government sales of weapons to the government of Sudan is also responsible for fuelling the conflict.

Consequences of Small Arms in Africa

African countries have experienced direct, indirect and consequential impacts of weapons proliferation. Thousands of people, – both civilians and combatants – are killed or injured every year on the continent. Yet, even when death or injury is avoided, small arms proliferation and misuse can dramatically impact a community, country or region's landscape. The threat and use of small arms can undermine development, prevent the delivery of humanitarian and economic aid, and contribute to refugee and internally displaced persons (IDP) populations.

The Internal Displacement Monitoring Centre estimates that, in 2007, 12.7 million people were living as IDPs in Africa.¹⁰ These populations are not just threatened by armed conflict, but are also at increased risk for disease transmission, when clean food and water cannot be reliably secured and when sanitation systems break down. In many camps, civilians are often specifically targeted by armed gangs, children are often abducted

for use as soldiers, and women and young girls may be victims of sexual violence at the barrel of a gun.

Because many small arms remain in circulation and in the hands of former combatants at the end of hostilities, they are often used in armed criminal violence and continue to perpetuate instability. Some African countries have seen a rise in criminal armed violence once a conflict officially ceases. For example, in South Africa, gunshot injuries account for 46% of violence-related deaths¹¹, even though the apartheid era has been over for more than a decade. Even peaceful countries are not immune from the dangers of small arms violence. Ghana has seen increased crime rates due to conflicts and weapons flowing from regional neighbours.

Small arms have dramatically affected the post-conflict development process in Africa. Foreign investment has been limited due to continued violence and the perception of instability. When large segments of the infrastructure and economy are destroyed during conflict, countries count on the assistance of the international community to rebuild. Without confidence in the security of a community, investors may be hesitant to provide development funds. It may simply be too expensive to guarantee the security of workers and protection of development projects. A World Bank study

The Kenyan foreign minister estimates that, in the past year, US\$150 million in ransoms have been paid to pirates off Africa's east coast. Small arms proliferation has contributed to the pirates' effectiveness and lethality. Pirates are even starting to upgrade their fire power, as weapons are readily available. While automatic weapons used to be the weapon of choice, rocket-propelled grenades (RPGs) are gaining popularity, threatening greater loss of life and property. Ransoms paid to pirates are often used to finance African wars and to fund terrorist organisations.

Long-term societal suffering, while less quantifiable, equally affects the future of conflict-prone countries and regions. Families may be torn apart, children orphaned and social and economic support systems disrupted by conflict and violence. Schools, universities and skills training programmes may not be able to reopen or operate due to violence, lack of personnel or lack of resources. Such conditions seriously harm the ability to rebuild and provide the next generation with opportunities.

In addition, the use of children in conflict is made possible by the proliferation of small arms. Although not directly responsible, small arms are simple enough to use that small children can easily be moulded into effective soldiers. Conflicts in the Democratic Republic of

UNTIL THE INTERNATIONAL COMMUNITY – AND AFRICAN COUNTRIES THEMSELVES – ARE ABLE TO CLAMP DOWN SIGNIFICANTLY ON THE SCOURGE OF SMALL ARMS THROUGHOUT THE CONTINENT, PEOPLE AND COMMUNITIES WILL CONTINUE TO SUFFER

found that, while the percentage of private wealth that is divested from a country doubles during an armed conflict, it continues to rise for the next decade. The same study found that a civil war costs a country approximately 60% of its annual gross domestic product.¹² For Africa, this has translated into tremendous losses. A 2007 Oxfam study found that, between 1990 and 2005, the 23 countries in Africa that experienced conflict saw their economies shrink by about 15% per year, at a cost of almost US\$18 billion annually. In total, Africa lost US\$284 billion during those 15 years.¹³

Africa also faces new challenges associated with small arms proliferation. Piracy has increased substantially in Africa in recent years. In 2008, the International Maritime Bureau's Piracy Reporting Centre (PRC) stated that, of the 293 incidences of piracy that were reported worldwide, 111 took place off the coast of Somalia or in the Gulf of Aden, and 40 occurred off the coast of Nigeria.¹⁴ The rise in piracy seriously threatens Africa and the international community. International shipping interests have been strongly affected.

the Congo (DRC), Liberia and Sierra Leone have relied on child soldiers to continue their battles, as the able adult male population has dwindled due to the length and severity of these conflicts. The Lord's Resistance Army in Uganda – the most well-publicised African user of child soldiers – is believed to have used at least 30 000 child soldiers in its 20-plus year civil war.

Child soldiers are used by state-controlled armed forces and non-state forces alike. According to Human Rights Watch, children currently serve in the state militaries of at least five African countries (Chad, DRC, Somalia, Sudan and Uganda). Non-state armies are currently recruiting and using children in at least six African conflicts (Central African Republic, Chad, DRC, Somalia, Sudan and Uganda). The Coalition to Stop the Use of Child Soldiers notes that tens of thousands of child soldiers have been released from armed groups within Africa as a result of the cessation of a number of African conflicts. However, the practice remains common, and children remain at risk in some of Africa's most entrenched conflicts.



Sierra Leone’s disarmament programme resulted in the successful collection and destruction of thousands of weapons.

Even after ex-combatants are welcomed back into their communities, significant challenges remain in the rebuilding process. An absence of educational and vocational opportunities often marginalises young soldiers returning from conflict. Without such opportunities, young people may revert back to carrying weapons to assert dominance and worth, perpetuating a culture of violence where guns are tools for conflict resolution, and a culture of impunity arises.

Addressing Small Arms Proliferation in Africa

Small arms proliferation and misuse have placed tremendous burdens on African society, and require multifaceted solutions. Because these weapons have legitimate military, police and civilian uses, prohibition is neither desirable nor realistic. Different communities,

states and regions will address small arms differently, but all must develop ways to control the supply of weapons, eliminate potentially dangerous stockpiles of weapons, end misuse and address demand.

National Efforts

African countries must develop adequate and effective national legislation and controls on the small arms trade. On the whole, Africa lags behind the rest of the world. The International Action Network on Small Arms (IANSA) has determined that only 34 of the 44 countries in sub-Saharan Africa regulate the small arms trade. However, existing legislation often contains serious weaknesses. For example, only two African countries take into account the threat of diversion of arms transfers. In comparison, IANSA notes that, of the

GREY MARKET ARMS TRANSFERS – WHERE ARMS BROKERS SKIRT INTERNATIONAL GUIDELINES AND NATIONAL LEGISLATION TO SUPPLY WEAPONS TO GOVERNMENTS AND ARMED GROUPS – CONTRIBUTE SIGNIFICANTLY TO CONFLICT AND CRIME IN AFRICA



A female insurgent raises a weapon outside a stadium in Mogadishu, Somalia (January 2009).

national legislation in 41 European countries, 32 take the risk of diversion into account. And while this may seem a minor omission, gaps of this kind allow arms brokers to move weapons around the globe with impunity.

Africa needs more than just laws, however. Countries must strengthen their controls of borders to prevent the flow of fighters and their weapons from country to country and conflict to conflict. The US has embraced this priority because of heightened terrorist group activity, particularly in East Africa.

National peace and rebuilding plans must address small arms proliferation, including plans for demobilisation, disarmament and reintegration (DDR) programmes. The most immediate concern at the end of any conflict is the disarmament and demobilisation of fighting forces. Sierra Leone's post-conflict DDR programme has been hailed as a model for emulation around the globe. The multifaceted programme successfully carried out weapons collection

and destruction throughout the country, removing 30 000 weapons and destroying them. The government also offered reintegration assistance to over 51 000 ex-combatants in the form of apprenticeships, formal education, agricultural work and job placements.

National governments and local municipalities must also ensure that police and militaries are trained in the proper use of force, in accordance with international guidelines, to avoid small arms misuse. Even in countries outside of conflict zones, controlling small arms and preventing their negative effects must remain a priority, and livelihood and educational opportunities should be developed and strengthened.

Regional Efforts

Regional cooperation also has an important role in preventing small arms proliferation and misuse. The Bamako Declaration is an Africa-wide consensus for addressing the illicit proliferation, circulation and trafficking of small arms. Regions have also developed their own plans to address their specific small arms challenges, including the Nairobi Protocol¹⁵, which provides a framework for national small arms legislation in East Africa; the Southern African Development Community (SADC)¹⁶ Protocol on Firearms, Ammunition and Related Materials; and the Economic Community of West African States (ECOWAS)¹⁷ 1998 politically-binding moratorium on the importation, exportation and manufacture of small arms, which was made legally binding in 2006. For each region to address the small arms challenge successfully, these agreements must be fully implemented.

International Efforts

In addition, many international and global initiatives have also been developed, particularly through the UN system. The largest initiative is the UN Program of Action (PoA), which was the outcome of the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects. It is a politically binding agreement that outlines state responsibilities at national, regional and global levels.

As part of PoA follow-up processes, the UN is also considering an international Arms Trade Treaty (ATT), which would establish international standards for the import, export and transfer of conventional weapons, including small arms. In addition, UN working groups on the marking and tracing of weapons and controlling illicit arms brokering have met to establish international agreements. The UN Firearms Protocol – part of the UN Convention Against Transnational Organized Crime – focuses on preventing illicit manufacturing and trade in small arms from a law enforcement perspective.

BECAUSE MANY SMALL ARMS REMAIN IN CIRCULATION AND IN THE HANDS OF FORMER COMBATANTS AT THE END OF HOSTILITIES, THEY ARE OFTEN USED IN ARMED CRIMINAL VIOLENCE AND CONTINUE TO PERPETUATE INSTABILITY

Although many African countries have supported these international initiatives, compliance is often weak. A lack of resources undermines the response to the small arms problem and the ability to implement international agreements and obligations. Programmatic initiatives – such as DDR, weapons collection, destruction programmes and physical stockpile security management (PSSM) – are expensive, and may require bilateral or multilateral support. Indeed, UN agencies, the European Union and the US are among the largest supporters of African small arms programmes. The US, for example, has provided assistance to 21 sub-Saharan African countries since 2001 by assisting in the marking of weapons, destroying surplus small arms and man-portable air defence systems (MANPADS), and improving stockpile security. Without a commitment from the international donor community, many of Africa's international obligations will remain unfulfilled.

Conclusion

Small arms and light weapons have irrevocably changed the landscape of conflict and society in Africa. Until the international community – and African countries themselves – are able to clamp down significantly on the scourge of small arms throughout the continent, people and communities will continue to suffer. As the international community belatedly turns its attention to Africa to address continued conflicts in Sudan, the DRC and Somalia, economic, diplomatic and military strategies, in concert with African countries themselves, must address the implications of these deadly weapons. If they do not, their policies will have little chance of success, and millions of Africans will continue to suffer the tremendous consequences of such deadly weapons. ▲

Rachel Stohl is a Senior Analyst at the World Security Institute's Center for Defense Information (CDI) in the US. She is a co-author of *The Small Arms Trade* (2006).

Doug Tuttle is a Research Assistant at the World Security Institute's Center for Defense Information (CDI), in the US.

Endnotes

- 1 This article expands upon Rachel Stohl and Rhea Myerscough's article titled 'Sub-Saharan Small Arms: The Damage Continues'. *Current History*, May 2007.
- 2 Small Arms Survey (2003) *Small Arms Survey 2003: Development Denied*. Oxford: Oxford University Press, p. 57.
- 3 Schroeder, Matt and Lamb, Guy (2006) 'The Illicit Arms Trade in Africa: a Global Enterprise'. *African Analyst Quarterly*, Autumn 2006, pp. 69-78.
- 4 Farah, Douglas and Braun, Stephen (2007) *Merchant of Death: Money, Guns, Planes, and the Man who Makes War Possible*. John Wiley & Sons, Inc.
- 5 Small Arms Survey (2003), op. cit., p.80.
- 6 Lamb, Guy (2008) '*Under the Gun: An Assessment of Firearm Crime and Violence in South Africa*'. Institute for Security Studies, p. 7.
- 7 *Ibid.*, p. 13.
- 8 Schroeder, Matt and Lamb, Guy (2006) op. cit., pp. 69-78.
- 9 See, for example: Human Rights First (March 2008) *Investing in Tragedy: China's Money, Arms, and Politics in Sudan* and Amnesty International (2008) *Blood at the Crossroads: Making the Case for a Global Arms Trade Treaty*.
- 10 Internal Displacement Monitoring Centre (April 2008) *Internal Displacement: Global Overview of Trends and Developments in 2007*, p. 7.
- 11 Medical Research Council (2006) 'Violence'. Fact sheet for the 8th World Conference on Injury Prevention and Safety Promotion, Crime, Violence and Injury Lead Programme, Medical Research Council, 2-5 April 2006, South Africa. Available at: <<http://www.mrc.ac.za/crime/crime.htm>> .
- 12 Collier, Paul et al (2003) *Breaking the Conflict Trap: Civil War and Development Policy*. World Bank, p. 17.
- 13 Oxfam International *Africa's Missing Billions: International Arms Flows and the Cost of Conflict*. Briefing Paper 107, p. 9.
- 14 'Somalia Piracy Grows to Record Levels', Available at: <<http://allafrica.com/stories/200901160618>>.html Accessed on: 2 March 2009.
- 15 The Nairobi Protocol states are: Burundi, DRC, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Seychelles, Sudan, Tanzania and Uganda.
- 16 SADC member states are: Angola, Botswana, DRC, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
- 17 ECOWAS member states are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal and Sierra Leone.

EXPLAINING THE DECEMBER 2008 MILITARY COUP D'ÉTAT IN GUINEA

WRITTEN BY ISSAKA K. SOUARÉ



On 22 December 2008, the long-term ruler of Guinea, General Lansana Conté, died after a long illness. A military junta seized power a few hours after the announcement, on state radio and television, of President Conté's passing away. A 44-year-old middle-ranking army officer, Captain Moussa Dadis Camara – until then barely known outside military barracks – headed the junta, and was proclaimed two days later as the new head of state. He called his group *Conseil national pour la démocratie et le développement* (CNDD), or the National Council for Democracy and Development. In a first move,

common to almost all military coups d'état, the CNDD announced the dissolution of the government and the National Assembly (parliament), and suspended the constitution. While the coup leaders were cheered across the country and by Guineans living abroad, their action was condemned by the international community, beginning with the African Union (AU) and the Economic Community of West African States (ECOWAS).

The Guinean coup occurred at a time when military coups d'état no longer seem to be in fashion on the continent, compared to an earlier period in Africa's post-colonial history. The aim of this article¹ is



A military junta seized power in Guinea in December 2008.

to attempt to make sense of this military intervention in Guinea – the second one since the country regained its independence from France in 1958. Why did the military intervene, and was it predictable? How can international condemnations of the coup in the face of apparent local support be explained? Are we likely to see a prolonged military rule in the country, or can we believe the leaders of the junta that they are committed to restore constitutional order and return to the barracks as soon as possible? And, before all this, what is a “military coup d’état” in theoretical terms?

Defining Military Coup d’État

“Coup d’état” is a French word that found its way into the English dictionary in the 17th century. It literally means “stroke of state” or “sudden change at the summit of the state”. Theoretically, however, it is defined by McGowan and Johnson as “events in which existing regimes are suddenly and illegally displaced by the action of relatively small groups, in which members of the military, police, or security forces of the state play a key role, either on their own or in conjunction with a number of civil servants or politicians”.²

This is a very elaborate definition that goes beyond defining the phenomenon to explaining how it occurs. A simpler, yet equally elaborate, theoretical framework

might be to define a coup d’état as “an illegal seizure of the highest level of power by a limited number of military officers in a more or less violent or peaceful covert operation that does not exceed a few days.”³

Both these definitions imply a number of points. First, the illegality of the seizure: this excludes seizures of power by constitutional means, such as impeachment, for instance. Second, the level of power of the deposed leader: this level has to be the highest, which means that the deposed leader has to be either the prime minister (in parliamentary countries) or the president (in presidential systems, such as Guinea). Third, the operation should not involve a huge number of military officers. This is a crucial, distinctive point between “coup d’état” and “civil war”. The latter requires a significant number of soldiers, ranging from the hundreds at the start of a campaign to reaching the thousands, in most cases. However, with regard to military coups, the number of those involved is very limited, because of the covert nature of the operations. Fourth, the operation has to be discreet; otherwise, it will be other than a coup. When a coup d’état that is still in planning somehow becomes known, its plotters will normally abort it and flee, or deny it if denial can save them. Otherwise, the government will foil it and the plotters may likely face harsh punishments. Finally, the



The military coup in Guinea was led by Captain Moussa Dadis Camara.

duration of the operations should be fairly short, as it needs to be discreet and the number of actors minimal.

In Guinea, the Speaker of Parliament announced the death of President Conté at 2am (although the president had died in the early hours of the previous evening) and the coup leaders announced their operation at 7am, just five hours later. Those actors that decided on the move were very few in number, not even involving all of the 32 members who later became the CNDD.

Why Does the Military Intervene in Politics?

There have been a number of theories developed over the years to explain the occurrence of military coups. Most of these theories were developed in the late 1960s and early to mid-1970s, which were the heydays of military coups in Africa, Asia and Latin America. Three theories stand out. The first of these theories is attributed to authors such as Samuel Finer, Bienen, Andreski, Le Vine and Janowitz. According to this theory, military coups happen because of what they describe as “social and political environments” in the countries affected. Third World countries in general, and African countries in particular, being of low or minimal political culture, are particularly susceptible to military intervention. Bienen argues that the military is able to

intervene “because it does retain legitimacy untainted by civilian failures”.⁴

Complementary to this theory is the contagion thesis, which argues that the occurrence of a coup in one country, due to the social and political environment, stimulates more coups in other countries, especially neighbouring ones. In other words, while one country might be immune to military intervention, its military officers might be tempted to intervene if they can refer to a previous successful attempt in a neighbouring country. This is particularly apparent in Bell’s argument, when he refers to two waves of military interventions in political affairs in Africa – one from late 1962 to mid-1964, and the other one from November 1965 to February 1966.⁵

The second and third explanations are somehow related. The common feature between the two is their assertion that the occurrence of military coups d’état cannot be predicted. The difference between the two schools of thought is that one argues for the “idiosyncratic nature” of coups and the other defends a “multicausal” approach to explaining the causes of military interventions. The idiosyncratic school of thought advocates a case-by-case approach to studying coups d’état in Africa. Zolberg, for example, has argued that military coups in Africa are a random phenomenon



Guinean people cheer and celebrate as soldiers parade in the streets following the December coup.

that may occur anywhere at any time. Thus, according to him, the best that scholarship can do is to reconstruct what happened and why, on a case-by-case basis after the fact.⁶ Decalo advances a similar argument.⁷

The multicausal or multivariant school draws on all these theories and adds what they describe as social and cultural determinants. They identify two further determinants not pondered by any other theorists. The first factor relates to the “external dimension”, which played a significant role in the Cold War era, and the second factor is what one may call “political skill” – or the lack of it – by the political leader in the country in which the coup took place. Thus, Johnson, Slater and McGowan call for a critical analysis of “the internal and external structural conditions and trends that, in combination, will assist us in explaining theoretically, the military interventions in sub-Saharan African states”.⁸ Which of these theories best explains the December 2008 military coup in Guinea?

Explaining the Military Coup in Guinea

In justifying their move, the coup leaders in Guinea stated the failure of the dissolved state institutions to fulfil their responsibility towards the Guinean people, who have been reduced to poverty and despair. This is despite the countless natural riches with which the

country is endowed. Asked in an interview, two days after the coup, about the reasons for his taking over power through a military coup, the leader of the junta, Dadis Moussa Camara, offered two explanations: one personal and one general.

The personal reason should be understood against the background that Dadis Camara seems to have entertained good personal relations with President Conté – evidenced by his revelation, in the same interview, that he shared a dinner with the deceased president just a week before his death. The personal explanation is that he knew that the military was going to take over in any case, but that he did not have good relations with the top echelons of the military establishment, particularly with the then-chief of the armed forces, General Diarra Camara. He explains that, given the fact that he had the means to do what he did and mindful of his relationships with the hierarchy of the army, “I had no choice after the death of the president: I had to either take over or leave the country.” To him, “had Camara taken over, I would have to go into forced exile to escape a certain death!”

The other general explanation is the aforementioned accusation that state institutions had failed their responsibility. According to the new head of state – and notwithstanding his previous good personal



Coup leaders in Guinea stated that previous leaders failed to address the country's poverty and related problems.

relations with the deceased president – the past 24 years of Conté's rule were characterised by scandalous practices. "As a patriot," he states, "I could not stand to see my country continue to slide into hell; and yet this was the likely fate of the country had we allowed the Speaker of Parliament or the outgoing civilian government of Prime Minister Ahmed Tidian Souaré to take over".⁹

It would seem, therefore, that the December 2008 Guinean coup could be explained by the social and political environment theory, given Camara's general reason. It could also be explained by the idiosyncratic school of thought, given the personal dimension of the coup and Camara's claim of his relationship with the top leadership of the military and his co-conspirators.

Internal Support and External Condemnation

For the first 24 hours after the death of the president, and following the CNDD's announcement

that it had taken over, it was not clear who was really in control in Guinea. There were divergent statements, with the coup leaders stating they were in control of the situation while, in interviews to foreign media, the future ex-prime minister and Speaker of Parliament insisted that they were in control. However, when it became clear that the coup leaders were indeed in control, there were jubilations throughout the country and by Guinean nationals living abroad, welcoming the new rulers and saluting their move. This stood in contrast to the outpour of condemnations coming from the international community, particularly the AU.

Eventually, in a communiqué issued on 29 December 2008, the Peace and Security Council (PSC) of the AU decided to suspend Guinea from the continental body until a return to constitutional order in the country. Both ECOWAS and the International Organisation of French-speaking Countries followed suit in January 2009. The AU's position is arguably a

WHEN IT BECAME CLEAR THAT THE COUP LEADERS WERE INDEED IN CONTROL, THERE WERE JUBILATIONS THROUGHOUT THE COUNTRY AND BY GUINEAN NATIONALS LIVING ABROAD, WELCOMING THE NEW RULERS

legal one, as it interpreted what happened in Guinea as a situation that fits the definition of “unconstitutional change”, according to the Lomé Declaration of July 2000, even though there were some questions about the constitutional legality and popular legitimacy of the National Assembly – a fact that has led some commentators to criticise the AU’s position.

Given the circumstances that surrounded it, the military takeover presented a significant dilemma to both Guinea and those actors of the international community – particularly the AU – that support good governance and respect constitutional order in Africa. On the one hand, the country had a constitution that entrusted the interim presidency of the country to the Speaker of Parliament in the event of the death of the head of state. According to Article 34 of the Constitution, once sworn in as caretaker president, the Speaker of Parliament should organise new presidential

position blind to the political realities on the ground in Conakry? This does not seem to be the case, unless one establishes that the wishes of the Guinean people are indeed a desire to live under military rule. Since this is not the case, it is apparent that their jubilation following the coup was only triggered by the end of the Conté era, and by the real possibility that the military takeover presents with regard to the establishment of constitutional order in the country. A proper reading of the aforementioned communiqué of the PSC shows that there is no real clash in position and desires between the AU and the Guinean people.

Just as some wars might claim to be “just”, one could be justified in arguing that there are, at times, “good coups”. The stamp of “goodness” is only eventually assigned in coups when leaders who have seized power are able to give up their acquired power, in respect of the good promises they made when they

WHILE THE COUP LEADERS WERE CHEERED ACROSS THE COUNTRY AND BY GUINEANS LIVING ABROAD, THEIR ACTION WAS CONDEMNED BY THE INTERNATIONAL COMMUNITY, BEGINNING WITH THE AFRICAN UNION (AU) AND THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

elections within 50 days. On the other hand, almost all the Guineans and many other observers agreed that the claims of the military leaders about the total failure of the ousted regime and state institutions to respond to the needs of the masses were valid. It was also clear that the beneficiary of the strict respect of the constitutional arrangement in this case – the Speaker of Parliament – was not known for his respect for democratic principles. He would most likely have exploited a weakness in the constitution to present himself as a candidate, and fraudulently steal the elections he was supposed to organise. The constitution does not explicitly bar him from being a candidate. Given his track record in Guinean politics, his presidency would have most likely been a continuation of the same disorder and scandalous practices that distinguished Conté’s regime.

There was, therefore, a legal and a political dimension to the situation facing the country. The principled position of the AU and other international organisations is justified from a legal perspective. The Guinean people are also entitled to a government that responds to their aspirations for better living conditions. But does the AU’s position clash with the aspirations of the Guinean people, who deserve and demand better governance, which they could not hope to get from a continuation of the Conté regime? Is the AU’s

seized power in the first place. The Guinean coup leaders are still in power, and there is no guarantee that they will stick to their good intentions to organise elections. Many people seem reassured, however, arguing that the national and international contexts have dramatically changed in such a way that the officers cannot cling onto power for long. Indeed, but is the stance of the AU and other international actors regarding the coup leaders not part of this changed international context? Clearly, this position should be considered by the Guinean people, should the military officers change their minds during the transitional period.

The PSC noted in its communiqué that it would work with the new authorities, in collaboration with the regional body, ECOWAS, to ensure a rapid return to constitutional order. As per the Lomé Declaration, the six months during which Guinea stands suspended from the AU (29 December 2008 to 28 June 2009) shall be used by the continental body to ascertain the intentions of the CNDD regarding the restoration of constitutional order. ECOWAS follows the same commitment.

Conclusion


Guinea’s new rulers seem mindful of the changed national and international context with regard to military coups d’état, and appear sincere in their

undertakings. As promised, they have appointed a well-respected civilian prime minister, Kabiné Komara, to form a transitional government, tasked with organising free and credible elections as soon as possible. Both the CNDD and the new prime minister have publicly declared that they will not seek to run for presidency. Mr Komara even went further, to state that he would fire any member of his transitional government who shows bias to any political party. These are reassuring signs.

On the other hand, however, there are signs that are less reassuring. For one, the prime minister formed a government of 29 members in mid-January 2009, with nine military officers. While this is a relatively small number compared to similar military regimes, the military officers hold very key positions, including the Defence, Finance, Justice, Information and Commerce portfolios. This has led some to questions around the amount of input Mr Komara actually had in forming this government.

One of the junta's gestures that reassured many observers was, when asked about their road map for the transitional period, they requested that political parties come up with concrete propositions about the modalities and timeline for the holding of both legislative and presidential elections. These proposals were submitted about a week later, in which almost all the political parties agreed that the elections be held during the course of 2009, and that the transitional period should not go beyond 2009. This time frame is in contrast with the 2010 deadline that the CNDD is proposing, although the CNDD is quick to state that it can work around it.

However, in his address to the nation on 14 January 2009, in which he outlined his priorities and political vision for the transitional period, the new head of state did not mention the political parties' proposal, nor did he allude to any specific time frame for the transitional period. In fact, the task he gave himself is unlikely to be completed within two, or even five, years. Clearly, this leaves observers with many questions about his intentions.

In the final analysis, however, it is safe to argue that if CNDD honours its initial undertakings and peacefully vacates its power position following the quick and transparent election of a legitimate government, the military coup of 23 December 2008 could be decreed a blessing for Guinea and its people. Otherwise, anything is possible – including popular uprisings to force the military government to honour its commitments. The support of the international community, the AU and ECOWAS, in particular, will be crucial in achieving this. 

Issaka K. Souaré is a Senior Researcher in the Institute for Security Studies' (ISS) African Security Analysis Programme, in Pretoria, South Africa. He is the author of, among others, *Civil Wars and Coups d'État in West Africa (2006) and Africa in the United Nations System, 1945-2005 (2006)*; and Co-editor of *Somalia at the Crossroads (2007)*.

Endnotes

- 1 This article is adapted from a shorter piece published in *ISS Today*, 6 January 2009, Available at: <www.issafrica.org>. The views expressed here are those of the author in his individual capacity.
- 2 McGowan, Pat and Johnson, Thomas H. (1984) African Military Coups d'Etat and Underdevelopment: a Quantitative Historical Analysis. *Journal of Modern African Studies*, 22(4), pp. 633-666.
- 3 Souaré, Issaka K. (2006) *Civil Wars and Coups d'État in West Africa: an Attempt to Understand the Roots and Prescribe Possible Solutions*. Lanham, MD: University Press of America, pp. 29-30.
- 4 Finer, Samuel E. (1962) *The Man on Horseback: the Role of the Military in Politics*. London: Pall Mall Press, pp. 87-88; Bienen, Henry (1968) Public Order and the Military in Africa: Mutinies in Kenya, Uganda, and Tanganyika. In Bienen, Henry (ed.) *The Military Intervenes: Case Studies in Political Development*. New York: Russell Sage Foundation, p. 38; Le Vine, Victor T. (1967) Independent Africa in Trouble. *Transaction*, 4 (8), pp. 53 – 62; Andreski, Stanislaw (1968) *Military Organization and Society*. Berkeley: University of California Press, pp. 208-209; and Janowitz, Morris (1968) *Armed Forces and Society: a World Perspective*. In Van Doom, Jacques (ed.) *Armed Forces and Society: Sociological Essay*. The Hague: Mouton.
- 5 Bell, M.J.V. (1968) The Military in the New States of Africa. In Van Doom, Jacques (ed.) op. cit.
- 6 Zolberg, Aristide R. (1968) The Structure of Political Conflict in the New States of Tropical Africa. *American Political Science Review*, 62 (1), pp. 70-87.
- 7 Decalo, Samuel (1973) Military Coups and Military Regimes in Africa. *Journal of Modern African Studies*, 11 (1), pp. 105-127.
- 8 Johnson, Thomas H., Slater, Robert O. and McGowan, Pat (1984) Explaining African Military Coups d'Etat, 1960-1982. *American Political Science Review*, 78 (3), pp. 622-640.
- 9 See the full interview with Cheikh Yérim Seck in Guinée: Moussa Dadis Camara – 'pourquoi j'ai pris le pouvoir'. *Jeune Afrique*, no. 2504, 4-10 January 2009, pp. 20-27.

MIGRATION AND XENOPHOBIA IN SOUTH AFRICA

WRITTEN BY **CHRISTY MCCONNELL**

REUTERS / THE BIGGER PICTURE



Introduction

Xenophobia became a wildfire that started in Alexandra, South Africa in May 2008, and rapidly spread nationwide. In the following days and months, over 70 migrants were killed and tens of thousands were expelled from their homes and communities by South Africans. Foreign-owned businesses were destroyed, amounting to over R1.5 billion in damages. And while foreign-national businesses contribute to almost 25% of the gross domestic product (GDP) in South Africa, the South African government has made no move to assist in compensation or further assistance for businesses that were destroyed during the attacks.¹ Moreover, the poor response by government and lack of migration policies has reinforced public perceptions: a South African Migration Project (SAMP) 2006 study² revealed that South African nationals are “particularly intolerant of non-nationals, and especially African non-nationals”. Based upon recent data and reports, this article seeks to review the implications of South Africa’s response to

migration, specifically in light of the 2008 xenophobic violence in South Africa, and the broader links to regional migration from its neighbouring countries.

The more recent history of South Africa’s xenophobia can be traced to the transition from apartheid to a democratic government. In 1994, the freedom felt within South Africa came with the ideology that the country must be protected from “outsiders”. In light of South Africa’s history, it is reasonable that the country needed to put its citizens first in line for transformation and change. However, the closed-door migration policies, sluggish development and increase in poverty and inequality have provided a breeding ground for xenophobia. Over the last decade, little tremors and eruptions of xenophobia have been apparent – with

Above: Demonstrators march against the wave of xenophobic attacks in Khayelitsha township, South Africa (May 2008).



Refugees who were victims of xenophobic attacks in South Africa, wait to be relocated by the police to a temporary shelter.

the greatest of those occurring in May 2008. Even now, the rumblings of xenophobia still remain. Without appropriately targeted migration policies to manage and work with the current migration flows in and out of South Africa, the recent nationwide attacks could be just the beginning of further targeted and more widespread violence against foreigners.

South Africa provides an interesting study of how policy and perceptions go hand in hand, and thus the importance of addressing both simultaneously. A common belief in South Africa is that every job given to a foreign national is one less job for a South African; this is exacerbated by the formal unemployment rates, currently in the range of 30–40%. However, there is no empirical evidence to support this belief, and some categories of migrant work actually increase employment opportunities for South Africans.³ In sub-Saharan Africa, migration policies and responses – or rather lack thereof – reveal a negative stigma and encourage xenophobia. South African policy responses to migration have failed to grasp the bigger picture, focusing only on specific issues and overlooking important linkages between such related areas as the “brain drain” phenomenon, increasing inequality among citizens, unemployment and HIV/AIDS. A comprehensive overview of regional migration and its implications for South Africa is lacking, and much needed. It is difficult to find recent and reliable reports

that analyse the situation at a regional level, and explore the complexities of the links between migration and development. Of the 56 countries in Africa, 19 either have no information on migration stock or only one census with data that can be used to analyse international migration.⁴ Undocumented migrants and short-term migration can easily be missed in data. However, South Africa does emerge as the country with the most data and information to provide a substantial case study on regional migration.

Regional and Circular Migration

South Africa is both a sending and receiving country of migrants: predominantly sending to the “north” [the United Kingdom (UK), the United States (US) and Australia] and receiving migrants from its neighbours (primarily Mozambique, Zimbabwe and Lesotho). While the majority of research and discussion on migration focuses on the flow from south to north, recent research reveals that half of the migrants from developing countries (estimated at 74 million) live in developing countries, and 80% of these migrants are living in countries with a “contiguous border”.⁵ Add to this an increasing globalised economy and labour market, and the atmosphere surrounding migration becomes even more complicated and complex.

The idea that it is just “the well-off” and highly skilled who are moving out of developing countries



Xenophobia is exacerbated by high unemployment rates and poverty.

is no longer accurate. Migration is occurring between developing countries, leaving the least-developed countries most vulnerable to the “brain drain” phenomenon. Meanwhile, middle-income countries – like South Africa – are experiencing both emigration to the north and immigration from its neighbours. Because migration is increasingly becoming a livelihood strategy for many suffering from poverty in southern Africa, lack of proper regional planning and policies surrounding migration place strain on individual countries, as well as on the region.

When one person physically moves out of a family, a neighbourhood, a region or a continent, they leave a gap. This loss can be measured by an increase of burden in the home and in the neighbourhood. On the whole, these single gaps and losses add up to large gaping holes of skills shortages, decreasing capacity in the economy, loss of investment in human capital, lower transfer of knowledge and less ability to develop a country and, specifically, sub-Saharan Africa. It is often these gaps that slow down already-lagging development. Economic policies are not able to address these gaps, and it is for this reason that comprehensive social policies within developing countries must address and provide for migration-related gaps and the filling of these gaps with available resources.

Legal southern African inter-regional migration has intensified over the last 20 years. However, the majority of migrants remain circular migrants – never permanently settling in the receiving country. Countries like South Africa and Botswana are seen as the top choice for migration, in terms of economic opportunities. But migrants remain connected to their home countries due to family, education, access to land, and national culture. The SAMP research reveals that the majority of regional migrants do not stay permanently in South Africa. Similar studies show that cross-border migrants to South Africa find better access to land, housing and services in their own countries, and that they travel mainly for economic opportunities. Migration is a livelihood strategy – a way to incur capital and income. For migrants, it is more beneficial to maintain two homes.

The South African Development Community (SADC), a regional alliance, upholds a vision “of a common future... that will ensure economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the peoples of Southern Africa”.⁶ Yet, while SADC is committed to greater regional integration in all economic spheres, it has been unable to promote the freedom of movement of people in the region progressively. Furthermore, the alliance has struggled to coordinate

a regional response to internal and external refugee movements, although the idea of “regional burden-sharing” has been embraced.⁷

Circular regional migration is a significant factor to consider as responses and tools to manage migration are developed. If migrants are moving to South Africa to seek out a better life, yet contribute to the economy and remain connected to their home country, how can appropriate policies allow the sending country, the receiving country and the migrant to all benefit reciprocally? South Africa and the SADC region have struggled to determine an approach that would benefit all territories.

Ironically, in the midst of the “brain drain” dialogue, South Africa is host to a wealth of resources, in the form of skilled migrants already within the country’s borders. Unfortunately, even with the need for skilled professionals in South Africa, these men and women are often unable to find work that matches their skills. For instance, legal migrants who are skilled in areas of plumbing, electronics and even engineering have certifications that are not recognised within the country. Many of these foreigners must resort to finding less-skilled jobs, and it is often at this level that South Africans feel that their jobs are being

on the flow of migrants from these three countries into South Africa. The survey revealed that 42% of persons surveyed in the three countries had visited South Africa at least once in their lives. Because tracking undocumented migrants is virtually impossible, the estimated migrant stock numbers have ranged from 500 000 to 1 million (estimate by Statistics South Africa) to 4 to 8 million (South African government estimate). One study found that South Africans “believe” that 25% of its population is foreign; however, the actual figure is more likely to be 3-5%.¹⁰ South African policy discourse tends to remain around “illegal aliens”. However, a number of studies have found that a majority of people enter South Africa legally, but overstay their visas.

Immigration Policy in South Africa

Following South Africa’s democratic transition, the Refugee Act took four years to draft and, after eight years of negotiations, the Immigration Act (“the Act”) was created. However, the Act was only implemented in 2005. Professor Jonathan Crush considers three reasons why it took South Africa so long to replace the apartheid regime’s Aliens Control Act: after apartheid’s

SOUTH AFRICAN POLICY RESPONSES TO MIGRATION HAVE FAILED TO GRASP THE BIGGER PICTURE, FOCUSING ONLY ON SPECIFIC ISSUES AND OVERLOOKING IMPORTANT LINKAGES BETWEEN SUCH RELATED AREAS AS THE “BRAIN DRAIN” PHENOMENON, INCREASING INEQUALITY AMONG CITIZENS, UNEMPLOYMENT AND HIV/AIDS

“taken”. In addition, issues such as remittances, brain drain and gain, HIV/AIDS and gender create a complicated environment, which needs specific policies that address the protection and promotion of migrants.

South Africa’s Policy Response to Migration

South Africa is considered a major foreign migrant receiving country in the region, hosting over five million “visitors” per year. According to the 2001 Census, 1 025 072 people living in South Africa were foreign-born, and more than half were from the SADC region.⁸ The SADC region, affected by the hardships of poverty, unemployment and underdevelopment, has experienced an inward flow of undocumented migrants to South Africa, increased trafficking in people, weapons and drugs, and the exodus of skilled professionals.

Lesotho, Mozambique and Zimbabwe are the largest source countries of documented migration into South Africa, as well as seemingly the largest sources of undocumented migrants.⁹ The 2000 migration surveys conducted by the Centre for Migration Studies focused

isolation, the idea of migration created panic in nationals and immigration was seen as “undesirable”; migration was not considered an opportunity for development but rather an issue of control and exclusion; and lastly, internal politics between the African National Congress (ANC) and Inkatha Freedom Party significantly delayed any progress.¹¹

While the Act attempts to be more migrant-friendly, it is considered extremely limited and ambiguous. It does very little to support the poor, and the emphasis is almost exclusively focused on attracting highly skilled migrants. The Act suggests that it is committed to “rooting out xenophobia” in society, but it gives no practical steps on how this will be achieved. In fact, the tougher enforcement and “community policing” of undocumented workers has actually increased xenophobia at the community level. Furthermore, the Act has driven labour migration further underground, leading to unclear statistics especially on undocumented foreigners.

For several years, South Africa’s Department of Home Affairs (DHA) refused to ratify the SADC draft



Zimbabwean immigrants wait to be deported from the Lindela Repatriation Centre outside Johannesburg, South Africa.

Protocol on Facilitation of Movement of People. More recently, however, South Africa has taken a more open approach. However, the Protocol still remains in draft form. It calls for a freer movement of people from within the SADC region, and its specific objectives are threefold: to allow a citizen of a member country to enter a fellow member country without a visa lawfully for ninety days; permanent and temporary residence for citizens in other countries; as well as the ability to work in another member country. While the first has seen greater acceptance throughout SADC, the latter two objectives are more difficult to implement regionally, and remain debated.

Responding to Refugees

The South African government records that nearly 160 000 refugee claims from 1994 to 2004 have been made – 74% from African countries. In 2007 alone, over 45 000 new applications for asylum were made to the South African DHA. Refugees from Somalia, the Democratic Republic of the Congo and Angola have high rates of acceptance; the majority of others are turned down. In February 2008, there was a backlog of over 89 000 asylum applications from 2006 to 2007.¹²

The Refugee Act places responsibility upon the South African government to provide full protection

and provision of rights set out in the Constitution – this includes access to social security and assistance. In addition, as of 12 January 1996, South Africa is a signatory of the UN Convention Relating to the Status of Refugees, obliging the state to provide equal treatment to refugees as they would nationals.

More recently, with the continued economic and political turmoil in Zimbabwe, millions of Zimbabweans have fled the country or rely heavily upon a migrant worker for remittances. Reliable data is unavailable within Zimbabwe, and the number of Zimbabweans in South Africa is unknown; estimations range from 500 000 to 3 million Zimbabwean refugees. These refugees remain incredibly vulnerable, since the majority have not entered the country legally, but thousands are fleeing to find safety as well as income for survival. As one of the main targeted groups during the May 2008 xenophobic attack, Zimbabweans continue to be the target of mass police round-ups and deportations.

Due to the lack of structures and systems for refugees, undocumented migrants are constantly at risk of being deported to their home countries. Since 1994, over 1.7 million undocumented migrants have been deported to Mozambique, Zimbabwe and Lesotho. In 2006 alone, 260 000 migrants were deported from South Africa.¹³ The Consortium of Refugees and Migrants in



Thousands of South Africans and foreign immigrants protest the attacks on the immigrant community in Johannesburg, South Africa (May 2008).

South Africa's (CoRMSA) 2008 migration report suggests that, in 2007, the number increased to more than 300 000.¹⁴ Many asylum-seekers are unable even to reach a DHA office to register and apply for asylum before they are deported to their home country. With the recent increase in the economic crisis in Zimbabwe and the May 2008 xenophobic attacks, deportation of undocumented migrants has skyrocketed.

Social Protection for Non-citizens

In 2002, South Africa's Department of Social Development (DSD) commissioned a Committee of Inquiry into a Comprehensive System of Social Security, or the "Taylor Committee". The Committee's report¹⁵ strongly recommended a comprehensive social protection system. It emphasised that the South African Constitution in Section 27 (1) (c) states that "everyone" has a right to social security. However, social assistance in South Africa continues to exclude non-citizens. The report suggested that "there will probably be constitutional pressure to ensure all people (including illegal immigrants) have access to certain basic services (such as emergency healthcare), and full access to certain categories such as refugees".

In 2003 and 2004, two different cases were brought before the Constitutional Court by Mozambican

permanent residents of South Africa, to challenge their eligibility to receive social assistance. The first case ruled that children born in South Africa, but of non-citizen parents, should not be denied the child-support grant. The other case, however, ruled that it was reasonable to discriminate against non-citizens with regards to the old-age pension, since "resources were constrained and citizens should be prioritised". The ruling was overturned in 2004, stating that non-citizens who were legally in the country and given permanent residence status should not fall outside the provisioning of old-age pensions.¹⁶ These cases are significant in highlighting the rights of non-citizens in South Africa, but they have not necessarily encouraged further protection of non-citizens.

The CoRMSA 2008 migration report suggests that the implementation of rights and services of migrants have lagged, and migrants are extremely likely to be excluded from basic social services. In addition to threats of violence, xenophobia keeps migrants (even legal migrants) from vital services to which they may be entitled, including health and education. The report highlighted that approximately 35% of migrant school-age children are not enrolled in school, because they are unable to pay the school fees and related costs – and some are just explicitly denied access to the school by a school administrator. In addition, many migrants

report being refused access to treatment at public clinics and hospitals, as well as being refused antiretroviral treatment for HIV/AIDS because they do not carry a South African identification card. Misunderstandings persist at the service provider level as to the rights of migrants – this is a primary cause of many migrants being turned away from basic and emergency healthcare services. The denial of services is a non- or miscommunication issue from the top down, as government has not been active in educating other government service providers about the rights of migrants within South Africa.

Conclusion

Triggered by the continued flaws in South Africa's Immigration Act, as well as the 2008 xenophobic attacks, the DHA has initiated a review of the current Immigration Act. A new approach is anticipated in 2009. Even a basic review of the migration situation in the SADC region – and South Africa specifically – clearly reveals that not enough resources or attention has been focused on regional migration.

Can South Africa become the leading country for regional integration and policies on migration? If South Africa is to fulfil its constitutional mandate, as well as international and regional agreements to pursue migration assistance through pro-poor policies, it must make greater efforts to lead the region in providing policies for free movement and the protection of people to encourage livelihoods and discourage further xenophobic reactions. Bilateral and regional agreements have the potential to manage migration between neighbouring countries, and provide protection for the movement of people between them. National and regional social policies can only truly be effective when they begin to address emigration as well as areas such as remittances, HIV/AIDS, entry into labour markets and social protection services.

Policies that focus on the protection of migrants provide a rights-based approach (upon which South Africa's Constitution is founded) and open doors to further discussion of xenophobia within the region. They also have the capacity to create an environment that will peacefully enhance the economic potential of thousands of migrants who are already within South Africa's borders. Creative policies and dialogue that recognise and accept migration as a continued phenomenon are needed within southern Africa. The South African government must remain relevant to the changing form of migration and realise that, in this globalised economy, migration has become a means for both a country and an individual to overcome poverty. The response from leaders and departments – more specifically, the Presidency and leading party, DSD and DHA – have the influence to either encourage or discourage xenophobia. Government has the mandate and the ability to provide safety and protection for those within its borders, even for non-citizens. ▲

Christy McConnell is a Partner at Reform Development Consulting, a South African-based research firm that works throughout Africa on social transformation. She recently worked at the United Nations Research Institute for Social Development (UNRISD) in Geneva, Switzerland, in the Social Policy and Development Programme.

Endnotes

- 1 (2008) 'Now Dust has Settled Down, Victims of Xenophobia Demand Compensation', *CAJ News*, 14 September 2008, Available at: <<http://thezimbabwean.co.uk>> Accessed on: 25 November 2008.
- 2 Black, Richard; Crush, Jonathan; Peberdy, Sally; Ammassari, Savina; McLean Hilker, Lyndsay; Mouillesseaux, Shannon; Pooley, Claire and Rajkotia, Radha (2006) *Migration and Development in Africa: An Overview*. African Migration and Development Series No.1. South African Migration Project, Cape Town: IDASA, pp. 91-105.
- 3 Black, Richard et al (2006) op. cit., p. 117.
- 4 Zlotnik, Hania (2004) 'International Migration in Africa: an Analysis Based on Estimates of the Migrant Stock', *Migration Information Source*, Available at: <www.migrationinformation.org/USfocus/print.cfm?ID=252> Accessed on: 27 October 2008.
- 5 Ratha, Dilip and Shaw, William (2007) 'South-south Migration and Remittances'. World Bank Working Paper No. 102. Washington, DC: World Bank, p. 2.
- 6 Southern African Development Community (2008) Available at: <www.sadc.int> Accessed on: 26 October 2008.
- 7 Black, Richard et al (2006) op. cit., pp. 88, 100.
- 8 Black, Richard et al (2006) op. cit., p. 115.
- 9 McDonald, David; Zinyama, Lovemore; Gay, John; De Vletter, Fion and Mattes, Robert (2000) 'Guess Who's Coming to Dinner: Migration from Lesotho, Mozambique and Zimbabwe to South Africa'. *International Migration Review*, 34 (3), p. 817.
- 10 Black, Richard et al (2006) op. cit., p. 116.
- 11 Crush, Jonathan (2008) 'South Africa: Policy in the Face of Xenophobia', *Migration Information Source*, Available at: <www.migrationinformation.org/Profiles/print.cfm?ID=689> Accessed on: 27 October 2008, p. 2.
- 12 Crush, Jonathan (2008), op. cit., pp. 6-7.
- 13 Crush, Jonathan (2008), op. cit., p. 2.
- 14 Consortium of Refugees and Migrants in South Africa (CoRMSA) (2008) 'Protecting Refugees, Asylum Seekers and Immigrants in South Africa', Available at: <<http://www.cormsa.org.za/wp-content/uploads/2008/06/cormsa08-final.pdf>> Accessed on: 27 November 2008, pp. 8-41.
- 15 'Reports of the Taylor Committee into a Social Security System for South Africa', Taylor Committee, No. 4 (2002) Committee Report No. 3: Conceptual framework, Department of Social Development, South Africa, Available at: <<http://www.sarpn.org.za/CountryPovertyPapers/SouthAfrica/taylor/index.php>> Accessed on: 25 November 2008.
- 16 Seekings, Jeremy (2007) 'Poverty and Inequality After Apartheid', paper prepared for the second After Apartheid Conference, Yale University, 27-28 April 2007, p. 21.

RECONCILIATION, TRUTH AND JUSTICE: CONFRONTING THE DILEMMAS

WRITTEN BY **TENDAIWO PETER MAREGERE**

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The concept of reconciliation has become an inevitable process in the contemporary realpolitik, to the extent that there has finally been a realisation that conflicts will continue to re-emerge unless reconciliation becomes a part of the peace process. Thus, the process of reconciliation has begun to be increasingly associated and prescribed for societies emerging from violent conflict. The assumption is that new societies coming out of a past that was riddled with violence, war, abuse of human rights and impunity have to trudge through the painful process of forgiveness, truth, justice and ultimately reconciliation to achieve peace. Although there is a broad consensus among academics as to the theoretical framework of the concept of reconciliation, there is still no general agreement regarding the kind of political conditions suitable for the implementation of such a process. Brandon Hamber concurred with

this view and acknowledged that, when dealing with victims of extreme violence, there is no magic formula to reconciliation.¹ Given this assumption, it is important to realise, albeit painfully, that after the most horrendous acts of physical, emotional and cultural violence have taken place, societies have to find a way to create new sustainable relationships and be able to live together again.

The journey towards reconciliation has to be understood and viewed from the broader perspective of people's cultural and social values. This assertion is

Above: Côte d'Ivoire's government and rebel soldiers hug one another during the inauguration ceremony of a joint central command for government forces in Yamoussoukro (April 2007)



Achieving reconciliation, following situations of extreme violence, such as the 1994 genocide in Rwanda, is extremely difficult.

based on the understanding that it is often the cultural factors that influence and sustain people’s search for truth, justice, reconciliation and peace. In other words, reconciliation has to be understood from the cultural contextualities of a people. This is aptly captured by Archbishop Desmond Tutu, who noted that:

“As our experience has taught us, each society must discover its own route to reconciliation. Reconciliation cannot be imposed from outside, nor can someone else’s map get us to our destination: it must be our own solution. This involves a very long and painful journey, addressing the pain and suffering of the victims, understanding the motivation of the offenders, bringing together estranged communities, trying to find a path to justice, truth and ultimately peace. Faced with each new instance of violent conflict, new solutions must be devised that are appropriate to the particular context, history and culture in question.”²

As captured by Archbishop Tutu, reconciliation is not a one-size-fits-all process that is easily understood across cultures, identities, nations and societies. It is a given that no theory fits perfectly into the context of all societies. Hence, different people, from different parts of the

globe, having been affected in distinct ways, by different conflicts, have a different and peculiar understanding of the concept of reconciliation and how the process should be engaged to influence the outcome.

It must be understood that reconciliation is an over-arching process that encompasses the search for truth, justice, forgiveness and healing. Put simply, it is a process that helps societies (perpetrators and victims) to live together again in time and space. Reconciliation is not necessarily about victims loving or forgiving their torturers or forgetting the past in any way, but about coexisting with them and developing the cooperation necessary to share their (victims’) society with the perpetrators. However, in most cases, the experience of a brutal past makes the search for peaceful coexistence a delicate, intricate and difficult operation.

At the core of a reconciliation process is the need for both victims and perpetrators to walk through the narrow paths of memory; that is, to understand what fuelled the conflict, what happened, what could have been avoided and what needs to be redressed to enable both parties to coexist peacefully. In the opening of these wounds, ideally the ultimate result will be for the victims to understand the truth, accept the apology, seek justice and be reconciled with the perpetrator.



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The front cover of South Africa's Truth and Reconciliation Commission's final report.

However, this is not always the case given the reality of the loss, pain, trauma, anger and hatred within the victim, and the general complexity of the reconciliation process itself. To illustrate this point, Rigby poses a cardinal question: "So how can people address the traumas of the past in a constructive and future-oriented manner?"³ If people have been traumatised, their loved ones taken away from them, their belongings destroyed, gang raped by the combatants – how can they look to the future in a constructive manner? What does it mean for such a society to come to terms with its past? These are challenges that normally confront post-violence societies in their quest to construct a future based on reconciliation and peaceful coexistence.

Dilemmas of Reconciliation: The Pursuit of Justice and the Demands for Truth

Many understandings about the concepts of truth and justice exist. The definitions of these two concepts both in theory and practice have undergone immense

contextual transformation. Societies have developed their understanding of these concepts to adapt to their own situations and contexts. Quite interestingly, in some quarters truth-telling is said to address the social need for knowledge to become acknowledgement. Its cathartic nature is believed to bring victims back into the fold of society, by recognising their suffering, providing a form of distributive or social justice and giving out non-conventional resources such as social awareness, collective memory, solidarity and the overcoming of low esteem. Truth has also been regarded as a form of social empowerment, given to previously powerless and repressed individuals and groups the possibility of reclaiming their lives and understanding the nature of their subjugation. In other societies, truth has also been viewed as a form of "justice as recognition", acknowledgement and/or admission. To some, truth is regarded as a form of compensatory justice, as it restores a sense of justice that had been broken down.

Understanding justice has also undergone several changes. It is no longer interpreted as righting relationships; rather, it is now often interpreted as meaning vengeance and retributive justice. It has, therefore, undermined the healing aspect of "justice" in its genuine form. Thus the approach by states and institutions in seeking retributive justice rather than restorative justice has greatly reduced the space for reconciliation – not only between individuals, but also between individuals and the structures that would be a contributing factor in fulfilling the aspirations of the people.

Notwithstanding the assertions made above, it can be argued that neither official truth nor justice – however wide-ranging and complete – are miraculous remedies to solve the deep wounds and irreconcilable differences that are occasioned by violent conflict. Indeed, beneficial as they are for a society engaging in a transition away from violence, illegality and atrocity – and for the victims in particular – in a number of ways that should not be minimised, both truth-telling and trials are limited and problematic. They can be cathartic, but they can also perpetuate conflict by creating an "us" versus "them" mentality.

Reconciliation and Justice

Reconciling with the future has, oftentimes, been a difficult process to appreciate in many post-violence societies as the interplay between justice and truth comes into being. Truth and justice are both of fundamental importance when it comes to ending cycles of violence, but reconciling them in the context of a peace process normally presents significant challenges. Paul Oestreicher agrees that this is never an easy process, since "to dispense with justice instead of dispensing it

can be deeply hurtful to the victims of injustice".⁴ Almost inevitably, a number of questions can be raised. How can victims of atrocities relinquish the desire for revenge? What constitutes fair, just and appropriate compensation to victims of war and violence? What is the victim's sense of justice where peoples' lives and dignity have been irretrievably diminished? Usually, the assumption in the pursuit of justice is that the punishment of perpetrators should follow due process of the law to prevent further violence. The question to ask therefore is: what is due process? Do victims understand this concept, since at times it also leads to procedural delays?

Sometimes group violence breeds collective enmity – how is that collective imagery erased so as to achieve genuine reconciliation? Moreover, if groups, societies or races have been at the receiving end of violence, injustice or oppression, how possible is it that they can accept apology and then forgive as a collective? How probable is collective justice, let alone collective reparation? For instance, have groups or societies like the Tutsis in Rwanda, the black population in apartheid South Africa, Ndebeles in Zimbabwe, victims of the Khmer Rouge in Cambodia, the Serbs in Bosnia – all of whom were targets of extreme violence – been able to accept apology and forgive as a collective? How realistic is it to achieve genuine reconciliation when dealing with groups, societies and civilizations?

If the prospects of shared truth are grim, and the prediction for reconciliation even grimmer, what then is there to be said for the prospects of justice? It must be noted that the vital function of justice in the dialogue between truth and reconciliation is to disaggregate the



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Former Liberian president, Charles Taylor, is accused of leading perpetrators to commit the many human rights atrocities that occurred in the country.

from 1997 to 2003 did so under the leadership of former Liberian president, Charles Taylor. There are numerous examples of how the lower-level perpetrators tend to pay the price for the crimes masterminded (and sometime

AFTER THE MOST HORRENDOUS ACTS OF PHYSICAL, EMOTIONAL AND CULTURAL VIOLENCE HAVE TAKEN PLACE, SOCIETIES HAVE TO FIND A WAY TO CREATE NEW SUSTAINABLE RELATIONSHIPS AND BE ABLE TO LIVE TOGETHER AGAIN

individual and nation, as well as to disassemble the fiction that nations are accountable like individuals for the crimes committed in their name.⁵ A classic example is the Nuremberg trials in Germany after the Second World War. The trials were meant to “individualise guilt” by relocating it from the collectivity to the specific individuals responsible. Needless to say, the trials failed in this respect, and the Germans are still collectively held responsible for crimes committed against the Jews.⁶

One area of constant dilemma in the justice after atrocities paradigm is the so-called “perpetrators” and “masterminds” phenomenon. In most cases, the people who perpetrate violence do so under the order and “guidance” of an influential person. For instance, the rebels who committed despicable atrocities in Liberia

committed) by the “leaders” at the higher levels. This reinforces the notion that justice is arbitrary and not definitive. Given this scenario, how then do societies attain fair trials, especially for serious crimes perpetrated by elites? All things being equal, is the judiciary capable of fulfilling the requirements of justice? The question is not whether the guilty should be punished, but whether justice can be achieved.

All these questions summarise the difficulties that lie in trying to balance the needs of justice, from the spectrum of those affected by genocide, war and ethnic conflict, to the demands for truth and reconciliation. In other words, what does reconciliation on a large scale look like, in reference to social conflicts? In summary, the debate about whether justice is a prerequisite for

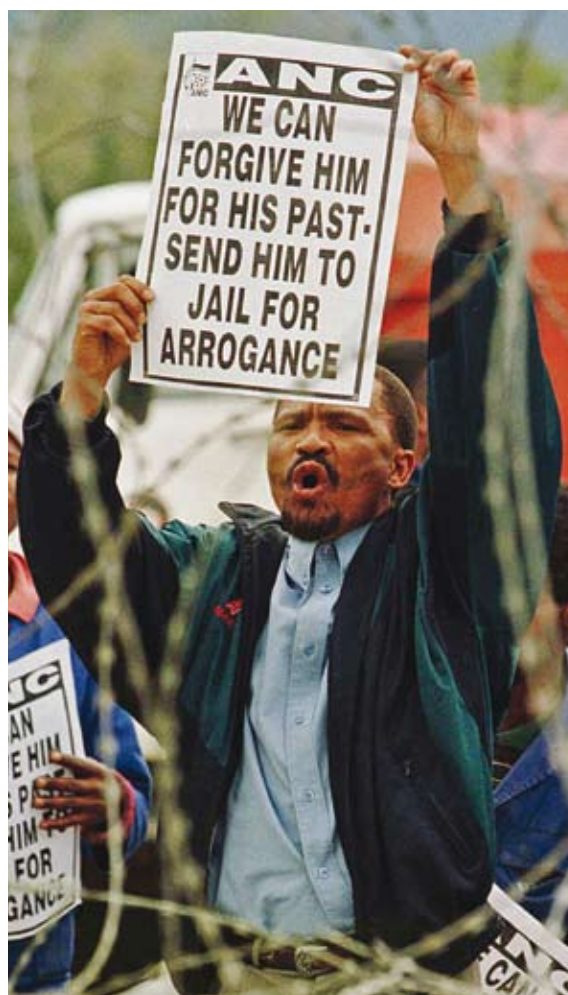
reconciliation or vice versa has never been resolved in theory as much as it is in practice. The assumption is that the pursuit of justice, and the demands of local and international communities, could be difficult to ignore, particularly because holding past perpetrators to account is vital to deterring future atrocities. Yet the vigorous pursuit of justice, in some instances, may be deeply hurtful and may trigger revenge and retribution, and thus perpetuate further conflict.

Reconciliation and Truth

One of the major dilemmas with justice and reconciliation is defining and agreeing on the nature of “truth”. In most instances, the formulation of truth has the usual challenges of perception, the ambiguity of language and the different levels of truth in any reconciliatory work.⁷ As Michael Ignatieff acknowledges, “In understanding the nature of truth one needs to distinguish between factual truth from moral truth, between narratives that tell what happened and narratives that attempt to explain why things happened and who is responsible.”⁸ In other words, the truth that matters to people is not factual or narrative truth, but moral and interpretative truth. The corollary usually is that both aggressors and victims develop their own perception and defence of truth, which normally creates myths about innocence and victimhood. The net effect is that the truth will be distorted, and will become an obstacle to the reconciliation process.⁹

Therefore, what is truth in a given setting is sometimes determined by the regime of truth prevailing in that particular time and space, and is prone to prevailing circumstances. In other words, each society is governed by a set of presuppositions in terms of which truth is assessed. In some cases, the dilemma lies in the determination of what is remembered and what is forgotten, to the extent that many societies are prone to making choices in suppressing memories that do not fit in with their perception of truth. In many cases, new regimes emerging out of violent conflict sometimes choose to remember certain truths selectively, at the expense of reality, in fear of the fact that the “real truth” may cause vengeance. Yet such a choice has a lot of bearing on the forgiveness and healing process. The dilemma here is manifested in balancing the truth from different competent narratives and recommending the one that is likely to be followed in a society that seeks to reconcile, or is pressured to undergo the process.

Furthermore, although it is generally believed that third parties (outsiders) play a part in the formulation of truth, the reality is that certain truths are only legitimised and known by the insiders. The logic here is that the truth, if it is to be believed, must be authored by those who have suffered the consequences of violence. Thus the victims of the genocide in Rwanda; persistent violent conflict



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South African protesters demonstrated against former apartheid president, PW Botha, at the Truth and Reconciliation Commission.

in Darfur, Sudan; of the Khmer Rouge in Cambodia; of apartheid in South Africa; of the civil wars in Northern Ireland, Sierra Leone, Liberia, Nepal and Chad have a gamut of truth that presumably outsiders will have (or had) great difficulty understanding and comprehending. Nevertheless, the truth of war and violence is so painful that those who have fought each other rarely, if ever, sit down to author it together.

The idea that reconciliation depends on shared truth about the past presumes that shared truth about the past is possible. This idea fails to realise that, in most cases, truth is related to identity. For instance, what you believe to be true depends largely on who you believe yourself to be. And who you believe yourself to be is most defined in terms of who you are not. This analysis fits very well with the identity crisis in the Balkans in the 1990s. For example, to be a Serb was (and maybe still is) first and foremost not to be a Croat or a Muslim.



Reconciliation is about building relationships and finding a way forward together.

The question that normally follows this argument on shared truth relates to shared suffering. Is shared suffering equivalent to shared truth? Although it may be relatively easy for both sides to acknowledge each other's pain, the crux of the problem usually arises in shared acknowledgement as to who bears the greater share of responsibility. The reality is that if aggressors have their own defence against truth, so do the victims. Normally people who believe themselves to be victims of aggression have an understandable incapacity to believe that they, too, have committed atrocities. Michael Ignatieff buttresses this point when he argues that, "... myths of victimhood and innocence are a powerful obstacle in the way of confronting responsibility, as are atrocity myths about the other."¹⁰

As has been the trend nowadays, states emerging out of violent conflict, or attempting to deal with the

exigencies of the past, take the route of establishing truth and reconciliation commissions (TRCs), as was witnessed in Chile, El Salvador, Guatemala and South Africa. Much as some of these commissions have been labelled a success, many of the victims of atrocities failed to identify with such processes. Again, a few questions will help in exposing the dilemma faced by victims of grave human rights abuses. Should the pursuit of truth be done in tandem with the quest for justice through a formal process? Do victims of violent conflict believe that justice will be served because a sophisticated TRC process is instituted? How do such processes resonate with a society's own perception of justice? In most cases, victims of grave human rights violations fail to see justice through the eyes of a TRC, to the extent that such a tribunal becomes a place to pacify the victims.

TRUTH HAS ALSO BEEN REGARDED AS A FORM OF SOCIAL EMPOWERMENT, GIVING TO PREVIOUSLY POWERLESS AND REPRESSED INDIVIDUALS AND GROUPS THE POSSIBILITY OF RECLAIMING THEIR LIVES AND UNDERSTANDING THE NATURE OF THEIR SUBJUGATION

James Brittain aptly captures this in his interview with Ntsiki Biko.¹¹ She states that:

“If these perpetrators are just let to go to the Commission, definitely they are going to lie there, because they want amnesty. And therefore no justice will have been done at all to the families.[...] I don’t know what the Commission is going to bring. Nobody has ever been to me to explain what this Commission is all about, and all that I know is that at the end of it we will have to forgive those people. But how can you forgive without proper justice having been done?”¹²

In Archbishop Desmond Tutu’s own words, the aim of the TRC in South Africa was “the promotion of national unity and reconciliation” and the “healing of a traumatised, divided, wounded and polarised people”.¹³ Although this may sound laudable, Tutu made many assumptions in this statement. He assumed that a nation has one psyche, not many; that the truth is certain, not contestable; and that, when the truth is known by all, it has the capacity to heal and reconcile. What emerges from this assumption is the belief that the truth is one and, if a society gets to know it, it will free all people. But is that realistic, attainable and understandable to communities coming out of violent conflict and widespread repression?

As a corollary, the key question that confronts many is: how much truth can societies stand? It is a given that all nations depend on forgetting; on forging myths of unity and identity that allow a society to forget its founding crimes, its hidden injuries and divisions, its unheralded wounds. It must be true, for nations as it is for individuals, that we can stand only so much truth. But if too much truth is divisive, the question becomes: how much is enough?

In conclusion, it is important to realise that reconciliation is a dynamic and adaptive process aimed at building and healing the torn fabric of interpersonal and community lives and relationships. Therefore, it is first and last about people and their relationships. Hence, it is never about returning to a former state, though there is longing to do so. It is about building relationships that are about real people in real situations, who must find a way forward together. The difficulty lies in the fact that, after a period of protracted violent conflict, enemies across the political, social, economic, cultural and ethnic divides are supposed to find a way to rebuild their lives based on their shattered past.

When we take a relationship-centric approach, it is possible to envision why reconciliation is so difficult following periods of violent conflicts or civil wars. For instance, reconciliation orients much of its energy towards understanding the deeper psychological and subjective aspects of people’s experiences, not just

in connection to their recent past but often based on generations of pain, loss and suffering. Reconciliation requires that people not only decide what to do about particular issues, but also address and reconsider their understanding of self, community and enemy. Building a relationship with a mortal enemy is always accompanied with a change in how you perceive yourself and your community, and how you perceive the other and their community. In short, reconciliation based on the building of relationships requires that people begin a process of reconstruction of identities. The monumental task is that the reconstruction must be done in a period of rapid, volatile and unpredictable change. Therein lies the dilemma and challenge of reconciling after intense periods of violent conflict, war and genocide. ▢

Tendaiwo Peter Maregere has a graduate degree in Peace and Conflict Studies from Coventry University in the United Kingdom. He is currently a Senior Research Associate at the Institute for African Integration in Harare, Zimbabwe.

Endnotes

- 1 Hamber, Brandan (2003) ‘Healing’. In Bloomfield, David et al (2003) *Reconciliation After Violent Conflict: a Handbook*. International IDEA, p. 77. See also Assefa, Hizkias ‘The Meaning of Reconciliation’ – MA Reader 2007-8.
- 2 Bloomfield, David et al (2003) op. cit., p. 10.
- 3 Rigby, Andrew ‘Dealing with the Past: Forgiveness and the Reconstruction of Memory in Divided Societies’. *International Journal of Politics and Ethics*, Vol. 3, No. 1, p 94. See also Rigby, Andrew (2001) *Justice and Reconciliation: After the Violence*. Boulder, Colorado: Lynne Rienner.
- 4 Oestreicher, Paul ‘Reconciliation: A Search for Its Meaning’. In Butler, Barbara (ed.) (1998) p. 38.
- 5 Ignatieff, Michael (1998) *The Warrior’s Honour: Ethnic War and the Modern Conscience*. New York: Henry Holt & Co., p. 178.
- 6 *Ibid.*
- 7 Villa-Vicencio, Charles (1997) ‘Telling One Another Stories: Toward a Theology of Reconciliation’. In Wells, Harold and Baum, Gregory (eds.) *The Reconciliation of Peoples: Challenge to the Churches*. New York, Orbis Books, p. 35.
- 8 Ignatieff, Michael (1996) ‘Articles of Faith’. *Index on Censorship*, Vol. 25. No. 5, Issue 172 Sept/Oct 1996.
- 9 *Ibid.*
- 10 Ignatieff, Michael (1998) op. cit., p. 176.
- 11 Ntsiki Biko is the widow of Steve Biko, founder of the Black Consciousness Movement, who was murdered in detention in South Africa in 1977. Her belief was based on the fact that only the vigorous persecution of the perpetrators of apartheid would begin to heal South Africa. See also Shea, Dorothy (2000) *The South African Truth Commission: The Politics of Reconciliation*. Washington DC: United States Institute of Peace, p. 73.
- 12 Brittain, James ‘Justice First’, an ITN interview in *Index on Censorship*, p. 67.
- 13 Ignatieff, Michael (1998) op. cit. p. 170.



GETTY IMAGES

QUESTIONING REINTEGRATION PROCESSES IN NORTHERN UGANDA

WRITTEN BY **GRACE MAINA**

Political transitions in Uganda are usually characterised by coups and bloodshed. Uganda’s current president, Yoweri Museveni, came to power through a guerrilla war in which he overthrew the then-sitting head of state, General Tito Okello. President Museveni has been in power in Uganda since 1986. Since taking office, he has faced a formidable resistance – the Lord’s Resistance Army (LRA) – in northern Uganda, and his government has been unsuccessful in restraining this force.

In 1987, Joseph Kony started the LRA by convincing aggrieved soldiers to join him, and by abducting those who refused to join his cause. The LRA initially comprised Tito Okello’s former soldiers. Until only recently, it had its base in southern Sudan, and basically ran its operations

by abducting young children to join its armed fighting groups. The war between the LRA and the government of Uganda has resulted in nearly 1.5 million people displaced from their homes into internally displaced persons’ (IDP) camps. Kony’s war has ironically turned against the very same civilian population he claims to be fighting for, inflicting inhumane acts and causing widespread despair and hopelessness. The northern Uganda region in which the conflict has been prominent is predominantly inhabited by the Acholi tribe, who have suffered greatly. The plight of those affected by

Above right: Joseph Kony, the leader of the Lord’s Resistance Army.



REUTERS / THE BIGGER PICTURE

Conflict in Northern Uganda has resulted in thousands of displaced people.

this war has, however, not received enough attention. The United States (US) government estimates that about 12 000 people have been killed as a result of this conflict, with many more dying as a result of disease and malnutrition.

The Refugee Law Project identified the two major causes of this war as being a great history of recurring violence and the marginalisation of the northern region. The existence of a north-south divide is explained by the economic imbalance that was created during the colonial era. The north was seen mainly as a reservoir of labour, and was a chief resource pool for the army.¹ The British deliberately introduced and created industries and initiated cash crop farming in the south.² The LRA rebellion can be summarised as a competition for resources. The LRA has been fighting the Museveni-led government since his rule began. The LRA has notoriously been known for forced conscriptions, atrocities against civilians, large-scale abductions of children and the rape and forced marriage of abducted girls. It is believed that thousands of children have been abducted into

the LRA and, as an initiation ritual, have been forced to kill members of their families and communities. The fighting has generated IDPs, and has caused the physical destruction of most of the socio-economic infrastructure in northern and eastern Uganda.

Different efforts have been advanced to end LRA operations in northern Uganda. At first, President Museveni engaged military solutions to the problem in that area. Civil society groups have noted that this solution only served to make the northern population more vulnerable, by multiplying the numbers of the displaced, and making the security situation worse. The other effort that has been initiated by the government of Uganda has been to trigger the involvement of the International Criminal Court (ICC)³, which has issued warrants of arrest for the top leadership of the LRA. This involvement of the ICC by the president is seen to have been another move that could have adverse ramifications on the northern Uganda population.

Another initiative of the government was to isolate the LRA leadership, by issuing amnesty to

THE UNITED STATES (US) GOVERNMENT ESTIMATES THAT ABOUT 12 000 PEOPLE HAVE BEEN KILLED AS A RESULT OF THIS CONFLICT



Child combatants are often placed in internally displaced camps due to continuing security concerns, instead of being taken back to their communities.

the perpetrators of the violent crimes. Through the Amnesty Act, the government was revisiting an old political formula of offering pardons to insurgents as a means of ending intractable conflict.⁴ The Amnesty Act extends amnesty to all Ugandans, irrespective of age, who have been involved in insurgency through actually

participating in combat, collaborating with insurgents, committing other crimes to support insurgency, or in any other way assisting others involved in the insurgency. It is on the basis of this amnesty that rebel factions have been giving up arms, and returning to their communities to be reintegrated into civilian life.

Following the anticipated end of this conflict in northern Uganda, both the international community and the local national community engaged a number of interventions and mechanisms that would assist in peacebuilding. A fundamental intervention that has been formulated and administered to this end is the Disarmament, Demobilisation and Reintegration (DDR) programme. DDR refers to the process of demilitarising official and unofficial armed groups by controlling and reducing the possession and use of arms, disbanding non-state armed groups and reducing the size of state security services, and assisting former combatants

IF THE ENVIRONMENT OF RETURN IS SO HARSH AND ADVERSE, THERE IS A HIGH LIKELIHOOD THAT REINTEGRATION COULD FAIL, AND MANY EX-COMBATANTS COULD REVERT TO A LIFE WITHIN THE REBEL RANKS

to reintegrate into civilian life.⁵ DDR finds its place in both the development and security agendas, and well-administered DDR processes give peacebuilding a better chance of success.

Reintegration has been defined by the United Nations (UN) as any assistance given to combatants to enable them to reintegrate into civil society. Consequently, reintegration is economic, political and social in nature. Reintegration must therefore include medium- to long-term programmes, including cash compensation, and training or income generation, meant to increase the potential for economic and social reintegration of ex-combatants and their families.⁶ Reintegration must be merged with the socio-economic development of the country as a whole. Successful reintegration depends to a large extent on how short-term concerns about security and political stability are not only addressed but also effectively reconciled with long-term strategies for economic reconstruction and development.⁷

This article questions the application of reintegration programmes in northern Uganda. There has been very little analysis undertaken on



The lack of job opportunities and rehabilitation facilities has driven some demobilised soldiers into criminal activities.

what constitutes successful reintegration in northern Uganda, and the absence of performance indicators is a major concern when trying to evaluate reintegration processes.

Reintegration: Problems and Challenges

Due to the continuing security concerns in northern Uganda, many people still live in IDP camps. The conditions for DDR are therefore not optimal since combatants who are supposed to be reintegrated, especially children, are not taken back into their communities but rather placed in IDP camps. The main objective of reintegration is to restore ex-combatants

return of ex-combatants to their villages is unlikely to be successful. “Reintegration” in such cases is a misnomer, since the ex-combatants do not return to their areas of origin.⁸

The term reintegration is also often confused with reinsertion in the DDR process in northern Uganda. It has been presumed that merely placing an individual back into their community constitutes reintegration. Different programmes on the ground have marked their achievement by the successful reunification of ex-combatants with their families. This action, however, while it may be a component of reintegration, is not reintegration in itself. Reintegration has to

THE SUCCESS OF ANY REINTEGRATION EFFORT IS TIED TO HOW THOSE BEING REINTEGRATED VIEW THE REINTEGRATION PROCESS, AND WHETHER THEY REGARD IT AS MEANINGFUL OR NOT

to the lives they had before they joined the LRA. This, however, has not been possible, leading one to question whether the real objective of reintegration has been attained. There can be no reintegration without return; any reintegration process that fails to consider the

do with securing the life of an individual to ensure that he is free from fear and need. Simply uniting an ex-combatant with his or her family and community does not ensure such freedom. More needs to happen beyond reunification to ensure effective reintegration.



Massive trainings in tailoring has resulted in a great number of qualified tailors with no opportunities for employment in this vocation.

While the term reintegration has commonly been used to cover all activities after demobilisation, in practice reintegration has been limited to providing reinsertion and resettlement assistance only.⁹ This has been due to a lack of funding, lack of good preparation and a deliberate action by DDR practitioners to limit their targeted assistance to ex-combatants only.

Following mass atrocities and constant attacks on the northern communities by the LRA, the government issued an order for these communities to vacate their ancestral homes. This meant that many people moved to camps in other parts of Uganda. Reintegration proposes restoring all these different groups of people back into the same community. While this may sound like the ideal action in instances of post-conflict reconstruction, the social implications of this action cannot be understated. Having been in different environments – some in the city, some in IDP camps and others abroad – it becomes difficult to synchronise all these different people to create one community. The individuals who make up the various new communities have formed new identities, and have since been socialised differently. Reintegration then becomes difficult in a single community, where different members may now have different value systems. The failure of reintegration processes to

articulate the great difficulties that communities will have upon their return to their ancestral homes could render the process ineffective. During an interview with a local resident in the north, he stated that: “Some have learnt how to earn a living by the gun, others will have more resources, and others will be very poor. It is difficult to reconcile the very different people who return upon reintegration. Their experiences will have shaped them differently”.¹⁰

Reintegration also aims to provide returnees with an alternative civilian lifestyle that promotes peace. Ideally, reintegration should seek to provide ways to help the combatants become economically independent and psychologically healthy. In northern Uganda, however, the reality is starkly different from what one would imagine. The lack of job opportunities and rehabilitation facilities for most of the demobilised soldiers – especially the younger soldiers – has driven them to committing crimes to ensure survival. When it comes to reintegration, it is imperative to recognise that most nations devastated by war simply do not have the resources to provide for proper reintegration.

Living conditions in northern Uganda are harsh, and it is difficult to implement ideal DDR. The region is characterised by low productivity, food shortages, high

insecurity levels, low levels of education and poor health conditions. With most members living in IDP camps, and with very limited resources, it is a constant challenge to survive for those who have returned. If reintegration implies taking a returning child to an impossible and harsh reality, it forces one to ask: What are these ex-child combatants really being reintegrated into? Though most of the child soldiers were forcibly conscripted into the LRA, the harsh realities of reintegrated life could possibly create nostalgia over the lives they led when in the bush. "For many of the girls, they were wives to commanders, and though their lives may not have been what some may consider luxurious, in comparison to the lives they now live they lived a very privileged life while in the LRA."¹¹ Depending on the rank an individual held in the LRA, life in the bush could have had more to offer, when compared to the current situations in the IDP camps. If the environment of return is so harsh and adverse, there is a high likelihood that reintegration could fail, and many ex-combatants could revert to a life within the rebel ranks.

Reintegration implies that there is a recipient community to receive the returnees upon their return. In this case, the Acholi community in the north should

responsibility for them, would be an action undermining the success of reintegration. Reintegration must pursue a holistic approach and consider the needs of all, if it is to be effective.

There is no "one-size-fits-all" solution or process to reintegration. Every war is different, and the impact it has on people is different. Even in the context of a single war, experiences are dissimilar from one community to another. The reintegration process must, therefore, be area-specific, and the needs of people must be considered on this basis. It is not possible to have one uniform application and programme that will be applicable to every area, person or community. An understanding and constant analysis of the local environment is vital. Failure to analyse will likely result in a technically oriented reintegration process fixated on procedures and techniques as opposed to substance, a neglect of the local anthropology and history that could better inform interventions, and a lack of perspective on how DDR fits into post-conflict reconstruction.¹² What works in an urban centre in Uganda, for example, will differ greatly from what may work in a rural setting. A good example relates to the rural areas of Uganda, where issues of land tenure and access are important –

COMMUNITY INVOLVEMENT IS CRITICAL TO THE SUCCESS OF REINTEGRATION, AND ANY PROGRAMME THAT OPERATES DEVOID OF THE OPINION OF THE LOCAL COMMUNITY IS NOT SUSTAINABLE

be involved in the reintegration planning and processes. Community involvement is critical to the success of reintegration, and any programme that operates devoid of the opinion of the local community is not sustainable. Many programmes tend to have a top-down approach, ignoring the input of the local community. Local involvement deals with issues of impunity, and allows communities to feel involved in accepting the returning combatants – on their own terms and in accordance to the dictates of their culture. Such local ownership of the reintegration process is a vital component of any meaningful reintegration and, consequently, effective peacebuilding.

With reintegration, it is often the case that more consideration is given to those who are returning from the "bush", and very little consideration is given to the local displaced communities in northern Uganda. But it is an error to ignore the local communities in the reintegration process. Upon returning to the community, the ex-combatants are placed back within their family structures and communities from which they originally came. To consider only one group – in this case, the returnees – and ignore the communities that have to take

but may not be so in the urban areas.

As a result of the different expectations during and for the reintegration process, it is not always clear when reintegration starts and ends – there are a lack of clear parameters to define the formal completion of the reintegration of ex-combatants. Some regard the end of vocational training to be synonymous with the end of reintegration whilst, for others, the end of the process is marked by the acquisition of a job. It is this inability to articulate the parameters of reintegration that leads to unrealistic expectations of the overall DDR process. Members of the international community tend to view reintegration in the short term, and make their judgements on completion, based on whether there is violence or not. These parameters, however, cannot hold if reintegration in northern Uganda is to be considered successful.

To ensure the effective reintegration of ex-combatants, it is critical that the training undertaken for returning combatants be matched with local market opportunities. In deciding on the overall components of the reintegration process, it is vital that the social, economic and institutional characteristics of the country

be considered more closely.¹³ It is common practice in post-conflict environments to have massive training in a particular vocation, which leads to substantial unemployment on completion of the training. A good example of this is the influx of tailoring schools available for returning female combatants in Gulu. The resulting number of tailors does not match the opportunities available in this vocation. For reintegration to be considered successful, research needs to be done on what is needed by the local economy, so as to inform the implementers of the DDR process on vocations in which to train. Failure to understand the socio-economic conditions and the local labour markets, and a lack of innovative ideas on how to stimulate employment for ex-combatants, can drastically undermine the reintegration process. In addition, failing to include the private sector in formulating reintegration programmes has also seriously undermined the process. A better understanding of the local environment, in terms of jobs and business opportunities, can only be informed through involving all members of the public and private sectors.

In order to help ex-combatants reintegrate, it is crucial to establish what the demobilised population thinks of the process of reintegration. The success of any reintegration effort is tied to how those being reintegrated view the reintegration process, and whether they regard it as meaningful or not.¹⁴ Their opinions cannot be minimised or replaced with other “good ideas”; their interpretation of life and what they would view as success is crucial. A bottom-up approach to reintegration planning and implementation will perhaps be the most important imperative to ensuring sustainability.¹⁵ Involvement of the returnees from the LRA faction will serve to improve the reintegration experience in Uganda.

Conclusion

This article has raised pertinent questions about reintegration processes. Examining the accepted notions of reintegration and the complex dynamics involved in the case of northern Uganda may hopefully enable a constructive assessment of whether the process on the whole has been well administered or not, and whether it is effective or not. Reintegration processes are complicated, especially in post-conflict environments. For programmes to have a lasting impact, Berdal argues that they must be a part of the wider, long-term attempt to create necessary political and psychological environments. This must be complemented by the necessary mechanisms and institutions to address unresolved tensions and issues.¹⁶ Effective reintegration must address issues of fear, needs and the root causes of conflicts. Reintegration must be linked to the overall

economic and development policy framework, and must support the entire community to ensure that it does not engender more inequalities, but presents a process in which genuine reconciliation and healing is possible. Long-term adverse implications – including the eruption of future related conflicts – are likely if ex-combatants fail to reintegrate properly. ▲

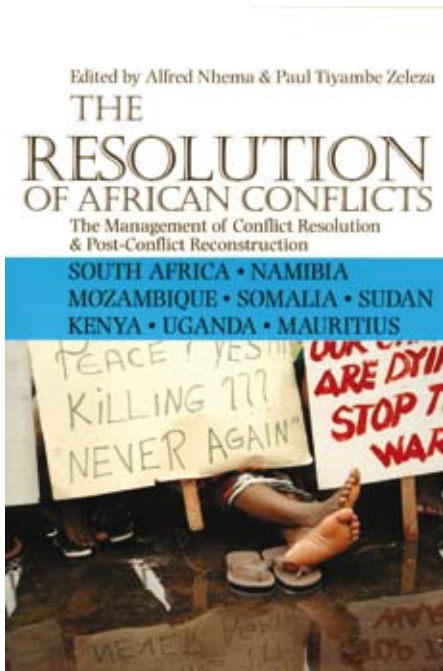
Grace Maina is a Doctoral Researcher at the University of Bradford in the United Kingdom. Her current research focuses on the reintegration of formerly abducted children in post-conflict scenarios.

Endnotes

- 1 Refugee Law Project (2004) *Position Paper on the ICC*. Kampala: Faculty of Law, Makerere.
- 2 International Crisis Group (April 2004) *Northern Uganda: Understanding and Solving the Conflict*. Nairobi: ICG.
- 3 See International Criminal Court (The Hague, Netherlands) (2004) ‘President of Uganda Refers Situation Concerning the Lord’s Resistance Army to the ICC’, press release, 29 January 2004, Available at: <<http://allafrica.com/stories/printable/200402050214.html>> .
- 4 Afako, Barney (2002) Reconciliation and Justice: ‘Mato oput’ and the Amnesty Act. *Conciliation Resources*.
- 5 Ball, Nicole and Van de Goor, Luc (2006) *Disarmament, Demobilization and Reintegration: Mapping Issues, Dilemmas and Guiding Principles*. Netherlands: Netherlands Institute of International Relations ‘Clingendael’ Conflict Research Unit.
- 6 Berdal, Mats (1996) *Disarmament and Demobilisation After Civil Wars, Adelphi Paper 303*, Oxford: Oxford University Press for the IISS.
- 7 *Ibid.*
- 8 Kingma, Kees (2002) *The Demobilisation of the Military*. Available at: <http://www.issafrica.org/dynamic/administration/file_manager/file_links/ACHIEVINGKINGMA.PDF?link_id=14&slink_id=1620&link_type=12&slink_type=13&tmpl_id=3> Accessed on: 22 January 2009.
- 9 Specker, Leontine (2008) *The R-Phase of the DDR Process: An Overview of the Key Lessons Learned and Practical Experiences*. Netherlands: Clingendael Institute.
- 10 Interview: Okello, Otieno (2008) Interview with the author on 9 September. Gulu, Uganda.
- 11 *Ibid.*
- 12 Pouligny, Beatrice (2004) *The Politics and Anti-politics of Contemporary ‘Disarmament, Demobilisation and Reintegration’ Programmes*. Paris: CERI.
- 13 Ozerdem, Alpaslan (2002) Disarmament, Demobilisation and Reintegration of Former Combatants in Afghanistan: Lessons Learned from a Cross Cultural Perspective. *Third World Quarterly*, 23 (5), pp. 961-975.
- 14 Berdal, Mats (1996) op. cit.
- 15 Ozerdem, Alpaslan (2002) op. cit.
- 16 Berdal, Mats (1996) op. cit.

BOOK REVIEW

REVIEWED BY **SADIKI KOKO**



THE RESOLUTION OF AFRICAN CONFLICTS: THE MANAGEMENT OF CONFLICT RESOLUTION AND POST-CONFLICT RECONSTRUCTION

Editors **Alfred Nhema and Paul Tiyambe Zeleza**
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An observation of conflict trends in Africa indicates that intrastate armed conflicts, which were on the rise between 1990 and 1998, have significantly decreased in number. Many conflicts on the continent have been settled and others are in the process of being resolved, generally through peaceful means. However, a number of conflicts remain a challenge in Africa.

The daunting challenges of post-conflict reconstruction facing the majority – if not all – African countries recovering from violent conflicts pose the risk of conflict relapse. This trend has been observed in recent years in a number of African countries including Liberia, Sierra Leone and the Democratic Republic of the Congo.

Despite the encouraging recession in the number of armed conflicts in Africa, the positioning of African states at a transitional crossroads renders them more likely to experience periods of instability as they move towards establishing new socio-economic and political frameworks. As Berman, Eyoh and Kymlicka have rightfully remarked, “African states face a quadruple [as compared to a triple for Eastern Europe and a double for Latin America] transformation: they must negotiate ethnic diversity at the same time as they are building state capacity, democratizing political systems and liberalizing economic institutions.”¹ All these transformation processes are a recipe for competition, heightened contestations and, if not well managed, violent confrontations.

The Resolution of African Conflicts is, thus, a timely contribution towards efforts aimed at freeing Africa from the scourges of its intractable conflicts. The book is the product

of an international conference hosted by the Organisation for Social Science Research in Eastern and Southern Africa (OSSREA), held in Addis Ababa, Ethiopia, in 2004 and focused on the theme “African conflicts: management, resolution, post-conflict recovery and development”.

The book is a compilation of 10 of the 62 papers presented at the conference, and it comprises an introduction and 11 chapters. The chapters are divided into two main sections, namely the continental mechanisms for conflict management (chapters 1–3) and specific case studies focusing on Uganda, South Africa, Namibia, Mauritius, Sudan, southern Africa, Somalia and Mozambique (chapters 4–10). Section one discusses the achievements and challenges faced by African regional and continental structures with regard to resolving conflicts on the continent. It emphasises the role that African civil society (non-governmental organisations, academia and research institutes) – though still weak, externally dependent and diverse – could play in partnership with governments and external actors to advance the cause of democracy, transparency, accountability and human rights on the continent. Section two is a balanced evaluation of diverse issues such as the advantages and shortcomings of some peace agreements (Uganda, South Sudan), as well as the conflict potential of both local government arrangements and elections in divided, underdeveloped and unequal African societies. While emphasising “the need to consolidate social cohesion” as a key factor in post-conflict reconstruction (chapter 9), section two also highlights the complex challenges faced by post-conflict societies as they move towards conflict transformation (chapter 10).

The concluding chapter of the book (chapter 11) discusses the issue of post-1990 constitutional reforms in Africa as a mechanism for conflict resolution on the continent.

Using a very informative historical perspective, the book highlights a number of factors that have, for years, impeded African leaders and people to play a major role in the prevention, management and resolution of continental conflicts. These factors stem from – but are not limited to – ideological and structural inadequacies within continental intergovernmental organisations, financial constraints, lack of will and political commitment on the part of states as well as external dependence (especially in terms of financial and logistical resources). The book, therefore, argues for a shift, as far as Africa is concerned, from a conflict reaction approach towards a conflict prevention paradigm. Hence the inclusion of chapters on the African Union (AU) early warning system (chapter 3), as well as the role of local governments in managing conflicts in South Africa, Namibia and Mauritius – countries that have not experienced armed conflict in the last decade (chapters 5 and 6). The shift towards prevention is seen as a progressive move for a continent that cannot afford the costs involved with peacekeeping and post-conflict reconstruction.

The establishment within the AU of a fully-fledged peace and security architecture (including the Peace and Security Council, the upcoming African Standby Force, the Panel of the Wise and the Continental Early Warning System) is considered as an affirmation by Africa of its determination to resolve its problems. Furthermore, the development within African Regional Economic Communities (RECs) of entire conflict resolution mechanisms and structures denotes the recognition by African regions of not only the regional dimension of African conflicts, but also of the necessity for regional responses if conflicts are to be comprehensively mitigated. As Adetula states, “[T]he successful development of both the AU and the various sub-regional organizations in Africa depends first and foremost on the commitment of African states to redefine regional and sub-regional integration in a way that moves the process beyond state-centered approaches to include, among other things, the increased participation of civil society – the people and their representatives in associations, professional societies, farmers’ groups, women’s groups and so on, as well as political parties – in regional integration processes” (chapter 1, p. 20).

Civil society participation in all spheres of AU and REC activities – including in the conflict management realm – remains critical for Africa to embrace the prevailing paradigm of broadening the field of peace and security beyond the dominant and narrow state-centric approach. Civil society organisations are, thus, expected to reclaim the space rightfully offered to them by both the AU and the RECs while, at the same time, the latter (the AU and the RECs) ought to ensure that legal provisions regarding civil society participation are fully implemented. Similarly, the AU and the RECs ought to impress upon their respective member states the necessity to espouse principles of democracy, good governance, transparent management of electoral processes, protection and promotion of human rights, economic development and continental integration as strategies for conflict prevention, management, resolution and transformation in Africa.

The Resolution of African Conflicts is an easily readable book. It is a timely response to the needs of academics, conflict practitioners and policymakers. It stimulates the debate on the qualitative development of mechanisms and structures devoted to conflict prevention, management and resolution in Africa. At the same time, it is a reminder that the qualitative development of conflict resolution structures and mechanisms is a continuous process. Lastly, by emphasising conflict prevention – as opposed to the “reaction to conflict” approaches – it represents a significant shift in both conflict resolution theory and practice relevant to addressing African conflicts. ▲

Sadiki Koko is a Senior Researcher at ACCORD.

Endnotes

- 1 Berman, B., Eyoh, D. and Kymlicka, W. (2004) ‘Introduction’. Ethnicity and the Politics of Democratic Nation-building in Africa. In Berman, B., Eyoh, D. and Kymlicka, W. (eds.) *Ethnicity and Democracy in Africa*. Oxford/Athens (Ohio): James Currey/Ohio University Press, p. 15.

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Doug Tuttle

Brian Wilson

Publisher

The African Centre for the Constructive Resolution of Disputes (ACCORD)

Private Bag X018

Umhlanga Rocks 4320

South Africa

Tel: +27-031-502 3908

Fax: +27-031-502 4160

Email: conflictrends@accord.org.za

Website: www.accord.org.za

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