



L. JACKSON/ANP

Conflict in Africa continues to adversely impact on the lives of millions of women and children on a daily basis

EDITORIAL

BY HUSSEIN SOLOMON

Since 1970, more than 30 wars have been fought in Africa. Last year, more than 15 African countries were involved in violent wars, or were experiencing severe civil strife. What is distinctive about these wars, as opposed to previous ones, is the nature of casualties. During the First World War, only 5% of casualties were civilian. In the wars currently being fought on the African continent, more than 90% of casualties are civilian.

Another striking feature of these wars is that it is the most vulnerable in society - women and children - that suffer the most. On the issue of children, the Machel Report has the following to say: *'During the 1990s, more than two million children died as a result of armed conflicts, and more than three times as many have been permanently disabled or seriously injured. Currently, approximately 20 million children have been uprooted from their homes, either as refugees or internally displaced [persons]. At any given time, more than 300,000 children, under the age of 18, are being used as soldiers in hostilities'*. In addition, children experience the impact of war in other ways. While expenditure on the military is driven up by conflicts, social expenditure declines. As a result, 40,000 children die each day - mainly in Africa and Asia - from malnutrition and a lack of water!

War adversely impacts on the lives of women in a variety of ways. They face physical violence, starvation and malnutrition, and poor sanitary conditions, as well as rape and other forms of sex-

ual violence. Indeed, rape is used as a strategy of war during conflict. According to Sally Matthews, rape is used for a number of reasons: it is used as an outlet for the sexual aggression of combatants, and is related to the idea that women are war booty; it is used to spread terror and loss of morale; and it is used to undermine women's ability to sustain their communities during conflict. Women continue to face the adverse consequences of war long after hostilities have ended. Consider, in this regard, the issue of the 30 million landmines strewn across a total of 18 African countries. While these landmines kill about 12,000 people annually - and maim tens of thousands of others - it is the women and girls who have to bear the brunt of this scourge. According to Heidi Hudson, this is because, in rural areas, it is they who collect water and carry wood over long distances, thus enhancing their vulnerability.

Clearly, this is an untenable state of affairs. If war cannot be prevented, then something must be done to protect the most vulnerable sectors of society. Despite the fact that systematic rape has been declared a crime against humanity, it still takes place, as evidence from the battlefields of Sierra Leone and other countries clearly indicate. This has to change. The lack of effective monitoring and enforcement mechanisms also continue to be the Achilles Heel with regard to the issue of child soldiers. The lesson is clear: legislation, without effective monitoring and enforcement, is useless. 🗿

TRENDS

in peacekeeping

At the end of the previous century, Africa was faced with a number of conflicts that continued to embarrass and mock the ability of all those concerned, to resolve their differences. Four of these conflicts managed to catch the attention of the United Nations (UN), a fact that is reflected in the mounting peacekeeping missions of varying focus. Africa ushered in its proclaimed century with numerous violent and complex conflicts. As if to confirm its ownership of this historic epoch, the continent also provided a glimpse of hope, with no less than four UN missions aimed at addressing some of these conflicts. The UN has responded to conflicts in the Democratic Republic of Congo (DRC); to the violent developments in Sierra Leone; to the war between Ethiopia and Eritrea; and has also provided assistance to the long-standing electoral process in the Western Sahara.

France, through the RECAMP initiative, announced a military exercise for southern African in the year 2002. The exercise, code-named Tanzanite, will be hosted by Tanzania. While regional planning meetings are still to be held, first impressions suggest that the exercise is geared towards addressing military needs - a fact to be looked at critically, considering the capacity needs of the region, which go beyond the military component. During the same period, the long-running British Military Advisory and Training Team announced its withdrawal from the region. Many observers would look at these developments and deduce that France has substituted Britain in terms of interest - this view does not foster a

proper understanding of what is required for effective capacity-building. In essence, the region still has to evolve a mechanism to determine its capacity needs. The region also needs to establish a process in order to engage outsiders, with the aim of finding out how to address those needs. One cannot help but understand that the region might be on a completely different wavelength, as it still has not identified instances where any of its existing capacity could be utilised in a coherent and collective fashion.

Ethiopian troops leave from the Eritrean town of Shilalo. Ethiopian soldiers continued their withdrawal from neighbouring Eritrea.



PEDRO UGARTE/AFP



Soldiers of the UN peacekeeping force in Sierra Leone (UNAMSIL) stand at a checkpoint in Freetown

EAST AFRICA

During the first quarter, mainly positive trends were traceable from the clear-cut, inter-state conflict between Ethiopia and Eritrea. A stipulation of their own agreement - on the issue of instituting commissions to deal with boundary issues - was fulfilled. This issue has been a critical factor during the two-and-a-half year conflict. In response to the compromised ability of the two countries to provide security for their affected areas, both states agreed that the UN's mission could monitor the delineated security zones between the two countries. These events are indicative of a commitment by both parties to adhere to their 12 December 2000 agreement. A trend that should be encouraged is the operational approach that was adopted with regard to these events, which were measured by mutually agreed-upon deadlines. Of encouragement to supporters and observers of the peace process was the satisfaction and conviction of the UN secretary-general, who recommended the mission be extended by another six months. By all indications, much still needs to be done to ensure that all stipulations of the agreement are fulfilled in order to ensure durable peace.

WEST AFRICA

The UN demonstrated its will to employ all capabilities in the search for a durable peace, by dispatching a commission of enquiry to investigate the events that led to violence that followed the presidential elections in Cote d'Ivoire. The UN decided to impose sanctions against Liberia for its continued support of the Revolutionary United Front (RUF) in Sierra Leone. This measure, which must be located within the ambit of conflict management on the part of the UN, did have the desired effect - Liberia responded by closing the RUF office in its capital city. The action also resuscitated regional activity regarding the conflict, when the Economic Community of West African States (ECOWAS) asked the UN to delay the implementation of sanctions against the country, while it sorted out its affairs.

SOUTHERN AFRICA

Positive trends can be identified from the UN mission in the Democratic Republic of Congo (MONUC). A Disengagement Plan was signed to further strengthen the Lusaka Agreement, by ensuring that the parties respond to military dis-

engagement stipulations. Reports at the time of writing were indicative of an adherent response, by both Uganda and Rwanda, to withdraw their troops from within the DRC. While many questions have been raised with regard to the disengagement of other parties to the conflict, the general feeling is that adherence by some parties would serve as an impetus for all parties to respond cooperatively, not only to this important facet of the agreement, but also to others relating to the resolution of the conflict within the DRC. One of the key processes that must take place is the Inter-Congolese Dialogue, which should serve as a vehicle for the evolution of a new political dispensation. During this period, a lot of activity was recorded, suggesting the overall acceptance of the facilitator. The activity also indicated that all conflicting parties have realised the importance of this process, especially after the demise of the president earlier in the year. This rendition is not blind to some of the hiccups experienced in the overall process, especially the trickling arrival of members of MONUC, whose presence is supposed to pre-empt the warring parties' departure. Amidst the pessimism regarding the chances of success, a focused eye must see the ability of all parties to continuously engage each other, despite very real acrimony amongst them.

NORTH AFRICA

Regarding the UN mission for the Referendum in Western Sahara (MINURSO), there have been some activities that have indicated the UN's continued involvement in the peace process. The secretary-general's report revealed some challenges that must still be addressed by the mission. As a result, the report recommended that the mission be extended until the end of April in order to give it more time to attend to some of the problems identified.

CONCLUSION

This first quarter has provided a new sense of hope all those involved in efforts to establish and sustain peace on the continent. While there are still unresolved conflicts raging elsewhere in Africa, the time for rhetoric is coming to an end, as the realisation dawns that total commitment towards peace is the only way forward. While the processes involved in bringing peace will, and can only be, a joint venture between the international community and ourselves, we need to draw lessons from those instances where this interaction exists, in preparation for our response to the remaining, and hopefully last, violent conflicts. 🇳🇵

Zimbabwean soldiers guard a road block in Kinshasa reinforcing the local Congolese force for security reasons ahead of the funeral of the Democratic Republic of Congo's slain president Laurent Kabila



YOVAN LEMMER/APP

TRENDS

in preventive action



Preventive Action refers to action undertaken by governments, regional organisations or non-governmental organisations aimed at preventing disputes from arising between parties, at preventing existing disputes from escalating into conflict and at limiting the spread of conflict when it occurs.

Regional and international structures continue to play a significant role in assisting countries that are facing socio-political and economic challenges. Interesting events have been witnessed in all sub-regions of the African continent during the first three months of 2001. This article will look at selective countries within the continent's five sub-regions, the way in which these countries are facing the above mentioned challenges, and the role that certain countries, regional and international structures play in preventive action. This paper will also look at whether or not there are any trends in the way that socio-political challenges

Democratic Republic of Congo leader Joseph Kabila, son of slain DRC leader Laurent Kabila, arrives at the 'People's Palace' during his father's funeral ceremony in Kinshasa



OLIVER HOSLET/AFP

manifest themselves, and will also look at the way in which regional and international structures respond to these challenges.

NORTH AFRICA

In its effort to facilitate the implementation of a settlement plan, as well as a constructive dialogue between Western Sahara and Morocco, the United Nations (UN) Security Council extended the mandate of its mission by two months. The UN mission was originally deployed in 1991 - years after peace efforts by the Morocco government and POLISARIO Front led to the signing of a settlement plan. Among other things, the 1988 settlement plan calls for a referendum to enable the people of Western Sahara to choose between independence or integration with Morocco. Although registration of eligible voters was completed in 1999 by the UN mission, scores of disenfranchised people have waged appeals against the exercise. This situation has contributed to the deterioration of relations between the two parties involved in the Western Sahara dispute. It has also resulted in a deadlock of the UN peace initiative. Consequently, the UN Security Council's latest decision was necessary.

Meanwhile, the Moroccan foreign minister criticised Algeria for providing sanctuary to armed

groups that use the country as a base from which to threaten the sovereignty and integrity of Morocco.

CENTRAL AFRICA

During the third summit of the signatories to the Lusaka Peace Agreement, the president of the Democratic Republic of the Congo (DRC), Joseph Kabila, called for the withdrawal of foreign forces from his country so that it could achieve sovereignty and integrity. Speaking in Lusaka on 15 February, the DRC president stated that he was prepared to meet with all Congolese armed groups in order to discuss the modalities of an internal dialogue. While the DRC peace process shows some positive signs (for example, during the same summit, President Joseph Kabila announced his acceptance of Sir Ketumile Masire as facilitator of the inter-Congolese dialogue), it still faces some challenges: Rwanda, which was upset during the summit, accused Zambia of giving safe passage to UN-wanted interahamwe, who were allegedly responsible for the 1996 genocide.

Subsequent to President Kabila's acceptance of Ketumile Masire as facilitator to the dialogue, the two men met during March to discuss ways in which to advance the peace process and dialogue - this seemed impossible during the late President Laurent Kabila's era. President Joseph Kabila took office on 26 January, after his father, Laurent Kabila, was assassinated.

On 22 March, DRC's neighbour, the Republic of Congo, held its first phase of inter-Congolese dialogue in the ten regions and six communes of Brazzaville. As was the case with the DRC's third summit, some relevant stakeholders were not present for the dialogue. Most vivid was the absence of internal and external opposition parties, which were also not represented during the 'all inclusive national dialogue' that took place on 17 March. These opposition parties boycotted the talks because of the agenda, which seemed to have been decided by the government, and also because of the absence of security measures. Among other things, the inter-Congolese dialogue focussed on strengthening national unity, setting up a republican public force, drafting a constitution and election preparations. Opposition parties criticised Gabonese president and Congolese mediator, Omar Bongo, for favouring the Brazzaville government during the preparatory phase of the dialogue.



ODD ANDERSEN/AFP

SOUTHERN AFRICA

A delegation of Zimbabwe's senior officials met with their South African counterparts in Pretoria on 19 March. They discussed the economic and political situation in Zimbabwe. The meeting formed part of a series of meetings that have taken place in Zimbabwe since the beginning of 2001. Among the issues discussed was the rule of law, as well as food, fuel and electricity shortages in Zimbabwe. The South African government has been criticised by the opposition party for assuming 'quite diplomacy' with regard to Zimbabwe. While the South African government has raised concerns about the socio-political and economic situation in Zimbabwe, it has also demonstrated respect for the sovereignty and territorial integrity of Zimbabwe. Thus, it has chosen not to publicly 'interfere' in Zimbabwe affairs.

Meanwhile, leaders who attended the Southern Africa Development Community (SADC) summit - which took place in Windhoek on 16 March - decided to integrate the organ on politics, defence and security into SADC's structures. It will be accountable to the summit of head of states. The organ chairmanship will rotate on an annual and troika basis. Political analysts applauded the decision, and argued that it would enable the regional bloc to practice the principle of collective accountability.

WEST AFRICA

Liberia may face further UN sanctions if it cannot establish that it has stopped supporting the Revolutionary United Front (RUF), which is waging war against the Sierra Leone Government. On

Police officers disembark a burnt out bus in the Harare high density suburb Glen Norah. The bus, ferrying ruling Zanu PF supporters to a nearby rally, was attacked by alleged opposition supporters



PEDRO UCARTE/AFP

An Ethiopian military truck leaves the Eritrean town of Senafe

12 February, a ministerial delegation of Economic Community of West African States (ECOWAS) asked for a two-month delay of a resolution which proposes sanctions against Liberia. This was intended to enable Liberia to take measures in order to show its commitment to ending support of the RUF. According to analysts, Liberia may not comply with the UN's demands - it has already failed to comply with ECOWAS demands to hand over RUF leader, Sam Bockarie.

In another development, Liberia expelled ambassadors from Sierra Leone and Guinean because of 'acts incompatible with their status' (spying). This action - taken on 19 March - occurred in conjunction with the closure of borders with Freetown. On 22 March, Sierra Leone retaliated by expelling Liberia's Charge d' Affaires. A number of countries within West Africa - including Guinea and Sierra Leone - have accused Liberia of harbouring dissidents within its territory.

EAST AFRICA

In January, Eritrea and Ethiopia began to work on the formulation of two neutral commissions that will deal with boundary issues and compensation claims. Under the peace agreement, which was signed last year, both countries will appoint two commissioners to each commission. While the Boundary Commission will delimit and demarcate the border between the two countries on the basis of colonial treaties and international law, the Claims Commission will deal with the socio-economic impact that the two-year conflict has had on the civilians from both countries. It will decide on claims for loss, damage or injury by each gov-

ernment. Observers have applauded the positive action taken by these two countries.

Meanwhile, the Transitional National Government (TNG) of Somali accused Ethiopia of interfering in its country's affairs by hosting talks with faction leaders, and by providing assistance to militia bent on destabilising the TNG. Leaders of more than eight factions met in Addis Ababa to discuss how they could advance a new, broadly participated reconciliation conference. Ethiopia denied the accusation and stated that it was interested in facilitating peace.

Leaders at the Arusha summit, which was held in January, recommended a three-year transitional government in Burundi. During the first 18 months of the transitional period, leaders from both ethnic groups - Tutsi and Hutu - should ideally serve in the presidential and vice-presidential positions, respectively. The reverse should be the case in the subsequent phase. The proposed transitional government forms part of numerous efforts to end the seven-year civil war. President Pierre Buyoya is among the candidates suggested for leadership positions during the interim phase. The endorsement of transitional leadership is scheduled for April.

SUMMARY OF TRENDS

When looking at the events which took place during the first quarter of 2001, several common features can be identified. Peace initiatives at international, regional and sub-regional levels seem to be gaining momentum. By way of example, the DRC, and the Eritrea and Ethiopia peace processes show signs of confidence-building. However, on the other side of the coin, certain challenges seem to threaten well meaning efforts. For example, all relevant stakeholders in Congo-Brazzaville and Somalia are yet to engage in a comprehensive dialogue aimed at producing stability within these countries.

The issue of balance, between sovereignty and regional stability, seems to pose a challenge for certain actors. While South Africa may attempt to observe and respect the territorial integrity of Zimbabwe - and therefore not interfere in its affairs - the threat of a potential humanitarian crisis compels it to take some action to protect regional security. Morocco, Somalia, Guinea and Sierra Leone are among a number of countries that have accused their neighbours of harbouring dissidents who threaten their own 'sovereignty'. 🗿

TRENDS

in constitutional and political developments



SOUTHERN AFRICA

As the quarter drew to a close, political and constitutional developments in Zimbabwe dominated the political scene in southern Africa. At a referendum held in April 2000, the country's ruling Zimbabwe African National Union (ZANU-PF) party lost a referendum, which sought to alter the country's constitution. The government had hoped to secure popular endorsement for a series of draft provisions which would have given it greater power to execute a series of programs, including a controversial land redistribution plan. During the parliamentary elections, which took place in June, the ruling party came close to losing its parliamentary majority. The elections were characterised by incidents of violence between supporters of the ruling party and the opposition. The opposition campaigned from a platform which advocated economic reform, comprehensive constitutional review, public accountability and respect for constitutionally protected human rights and freedoms. While the ruling party relied mainly on its existing political structures, the opposition mobilised itself into the Movement for Democratic Change (MDC), a union-based political party with links to civil society. The succeeding months were characterised by a series of conflicts between the executive and the judiciary, due to a number of rulings which challenged the constitutionality of the government's land redistribution plan. The country's top courts ruled against land occupations on three different occasions, but the actions continued. The supreme court main-

tained that the government was acting in breach of the constitution, which made provisions for property rights. On 18 January, the relationship between the judiciary and government deteriorated further when a cabinet minister accused the Chief Justice of censuring another judge regarded as a key government appointee. Government also protested against the supreme court, accusing it of obstructing the government's land program.

Civil society activism on constitutional issues was witnessed in Zambia - during the country's World Bank consultative group meeting in July, all deliberations were open to independent human rights and civil society organisations. This was influenced by events in neighbouring Malawi, where a select number of NGOs were invited to a session on human rights and governance. Zambian civil society used this as a precedent in order to persuade the Zambian authorities of the benefits of opening up discussions. The government's human rights record, as well its constitutional obligations, were openly discussed in the presence of civil society. This marked a significant development within the region - civil society has begun to assume a more visible role in issues of constitutionalism. In Angola, for instance, a grouping of civil society, together with 17 opposition parties, met in May to agree on a platform from which to voice opposition to the war, advocate free and fair elections, and encourage respect for existing constitutional provisions. At the same time, Angola's churches formed a joint body to champion peace and national reconciliation, and to press for constitutional measures aimed at

resolving the conflict between the government and the Union for the Total Independence of Angola (UNITA). South Africa, on the other hand, continued to be driven by a series of major constitutional additions, which also saw an active involvement of civil society organisations. The Promotion of Equality and Prevention of Unfair Discrimination Act, the Promotion of Access to Information Act, the Promotion of Administrative Justice Act, and the Preferential Procurement Policy Framework Act were all passed by the National Assembly. Legislation was also passed that will give protection to people disclosing information in the public's interest. In a landmark ruling taken in September, the constitutional court found that the government had an obligation, under the constitution, to provide short-term housing for several hundred people who had been evicted from their homes.

In Lesotho, disagreement between the upper and lower houses of parliament has resulted in a delay of the elections scheduled for May 2001. The lower house wants a seat mix ratio of 80 candidates elected by the 'first past the post' method, as well as 40 candidates elected by proportional representation. However, the upper house wants an 80-50 mix. The Interim Political Authority (IPA) blamed the government and parliament for the slow submission and processing of two bills related to the election. It also warned that failure to hold elections this year would negatively affect the current negotiation process.

WEST AFRICA

In West Africa, the Ivory Coast also experienced changes towards a greater involvement of civil society in the 'workings' of the country. An uprising sought to force Ivorian President General Guei from power. This was compounded by the fact that voters in the northern power-base of opposition leader Alassane Ouattara, largely boycotted the elections. The uprising was set off by claims that Guei allegedly attempted to rig the elections. An earlier court ruling, which excluded two major political opposition figures from taking part in the presidential election, also contributed to the uprising.

There were other interesting trends in Senegal, Eritrea and Somalia. In Senegal, the electorate blocked President Abdou Diouf's efforts to run for a fourth consecutive term. Following a highly competitive March election, Diouf peacefully conceded defeat to veteran oppo-

sition leader, Abdoulaye Wade, who won almost 60% of the votes cast.

Diouf, leader of the party that has governed Senegal since its independence from France in 1960, joined the ranks of Mwalimu Julius Nyerere, Ketumile Masire and Nelson Mandela by constitutionally vacating office. Prior to the elections, Senegal set another precedent, when a Senegalese court indicted Chad's exiled former leader, Hissein HabrÉ, on charges of torture. He was placed under house arrest. It is the first time that an African has been charged by the court of another African country, for atrocities committed within his own country. The action represented a major step toward promoting respect for human rights and good governance.

EAST AFRICA

In Eritrea, there are signs that the governing People's Front for Democracy and Justice (PFDJ) may make an attempt to introduce political pluralism. The Eritrean National Assembly concluded its 13th session on October 2, by announcing that multiparty elections would be held in December 2001. The assembly has formed a committee to draft regulations that will govern political parties. There may well be prospects for constitutionalism in Somalia. Following the Intergovernmental Authority (IGAD)-backed national reconciliation conference in August, a peace plan - put forward by Djibouti's president, Ismael Omar Guelleh - was debated, which led to a new transitional government. Somali president, Salad Hassan, subsequently reclaimed Somalia's UN seat and addressed the UN Millennium Conference in New York.

In Kenya, constitutional reform is widely seen as the only way to stop President Moi from taking a third term of office in the next presidential elections, which must be held no later than January 2003. In response to a growing movement aimed at amending the 1963 constitution to limit presidential powers, the ruling Kenya African National Union (KANU) has adopted the position that only the parliament can review the constitution. The parliamentary select committee on constitutional review has already amended the Constitutional Review Act of 1998, which allows the president excessive influence in the constitutional reform process. This has led to the growth of a civil society-based initiative, popularly known as Ufungamano or 'people's constitutional review'. This initiative has promised to produce a draft con-

stitution by the end of 2002. Currently, renowned constitutional lawyer, Professor Yash Pal Ghai, is assisting to narrow the differences between the civil society and parliamentary-led initiatives. The parliamentary-led initiative is widely perceived to be dominated by the ruling party.

In Tanzania, differences between the ruling Chama Cha Mapinduzi (CCM) and opposition Civic United Front (CUF) appear to be widening. In January 2001, violence broke out as police tried to break up nationwide demonstrations. The demonstrations were organised by the CUF in protest of the October 2000 election results. The demonstrators also demanded fresh elections in Zanzibar. A total of 16 constituencies in the Mjini Magharibi region of Zanzibar are at the centre of a dispute between the CUF and the Zanzibar Electoral Commission. The commission failed to deliver election materials to these constituencies, and is perceived to be supportive of the CCM. Despite the fact that a re-run was conducted in the constituencies on 5 November, the CUF did not participate, and maintains its call for fresh elections. In the violence that characterised the January demonstrations, CUF supporters fled to the Shimoni isles, located just off the Kenyan coast. They cited harassment by security forces as the reason for their flight. Currently, more than 2000 Zanzibaris have sought refuge in Shimoni, including a sizable number of CUF parliamentarians. The Mwalimu Nyerere Foundation has made a number of attempts to mediate in the dispute, and has also attempted to launch a dialogue between both sides. At the core of CUF demands, is a call to change the Union Constitution of Tanzania, with a view to revisiting the structure of the union itself, in which Zanzibar is perceived to be an unequal partner. This appears to be at the core of the constitutional debate in Tanzania, with one school of thought advocating for a three tier union structure, while another seeks to maintain the existing two tier framework. The need to revisit the debate on the viability of the existing union arrangement was one of the recommendations presented by the Nyalali Document, which is widely viewed to be a frame of reference for constitutional development and reform in Tanzania. The Nyalali study was conducted prior to the introduction of multiparty politics in Tanzania in 1995. It made wide ranging recommendations concerning the functioning of democracy under a multiparty framework. One of the CUF's demands is that the Nyalali recommenda-

tions must be implemented in full. The government is perceived to have only partially implemented the recommendations. Efforts by the Mwalimu Nyerere Foundation to resolve the dispute continue.

During the last quarter, Uganda has gone through a referendum, as well as presidential elections. The referendum was held in June 2000, while the presidential elections were concluded in March 2001. Preparations are currently underway for parliamentary elections, which are scheduled for April 2001. The referendum aimed to find out whether or not Ugandans wished to retain the existing Movement structure, or whether they would prefer to adopt a multiparty political system. The results showed majority support for the existing system, but opposition leaders claimed a moral victory due to the low voter turnout. At the core of their opposition to the referendum exercise, is the belief that political pluralism is a natural right, which cannot be subjected to a vote. In addition, the opposition maintains that the Movement system approximates to a one party structure, albeit in a disguised form. The government has attempted to resolve the conflict by drafting a set of guidelines that will govern the conduct of political organisations in Uganda for the next five years, as required by the constitution. However, opposition leaders have questioned the process, claiming that the Political Organisations Bill should have been passed before, rather than after, the referendum exercise. The recent presidential elections saw incumbent, Yoweri Museveni, winning by approximately 70% of the vote. His closest rival, Colonel Kiiza Besigye, garnered slightly less than 30% of the vote. The electoral process was characterised by incidents of violence, attributed to supporters and militants from both the opposition and the Movement side. Colonel Besigye has filed a petition to challenge the results, claiming that voter intimidation, election irregularities and limited access to the public media occurred during the elections. Also at the centre of the dispute are three commissioners from the electoral commission, who have been charged with tampering with the voters roll. The Movement side, on the other hand, has made submissions in connection to a charge that Colonel Besigye's camp was preparing for violence, in the event that the election results turned in favour of the Movement. President elect Museveni is expected to be sworn in for his final term during the month of May. 🏠



DESIREY MINKOH/AFP

There are over 300,000 children involved in armed conflicts in Africa

FEATURE

BY DR M ELIZABETH SMIT

war games

Warfare consumes a disproportionately large amount of human and scientific resources. Millions of the world's scientists are engaged in the arms industry, and nearly half of the world's research and development expenditure is used for military purposes. In many countries, children live in conditions of continuous war and are called upon to bear arms and participate in combat. In addition to the obvious health risks - and even loss of life - less visible, but equally important psychological and social harm is inflicted upon children due to armed conflict and violence. If the world wants to prevent the use of child soldiers in Africa and other parts of the world, then disarmament is probably one of the most important issues of our time.

The Acholi people of northern Uganda have a proverb:

"Poyo too pe rweny."

"Death is a scar that never heals."

Children are undoubtedly the most valuable group in any community. When people's lives are torn apart by conflict, the youngest are always among those who suffer first - and the most - from the various effects of war. In addition, the psychological damage caused by war often remains with a child for the rest of his/her life (Nakou and Pantelakis 1996:235).

The relationship between children and peace is a complex and dynamic process. One can examine the relationship from two interconnected positions. Firstly, children appear to be objects of peace. However, throughout history, and at numerous moments of tension and conflict, children have repeatedly been used as objects of war in situations where they should naturally have been objects of

A young Congolese rebel at Kalemie airport, southeast DRC in Katanga province.



peace. Instead of benefiting from the financial, moral and spiritual advantages of peace, children have suffered the consequences of war.

BACKGROUND

The phenomenon of child soldiers is not as new as the notion of children's rights. Children have participated in wars since primitive times, especially when their military activities and contributions were considered necessary for the existence of a community. According to Kosonen (1986: 7-8), it was at the beginning of the 1960s that child soldiers again entered into the picture. Their involvement was mainly connected to civil wars and struggles for national liberty, and they were mainly found fighting in developing countries.

My name's Fernando Simiio Maposse. I'm 14 years old and come from Chokwb District. One night, while sleeping together with my brothers, I was kidnapped from my house by armed bandits. When they arrived, we did not know who they were. They said they were FRELIMO soldiers and that they were looking for 'Madjone-djone', those gold miners. We did not open the door because we were suspicious, so they pushed it open and came in. They tied me up and took me away together with my two brothers. Some of the soldiers were burning down our village. Then they took us all to a base. On the way we found a village, where they killed the cattle and we had to carry the meat with us. We walked to the base. Some time later I was sent for training. I did somersaults and climbed trees. During the next four months, they taught me to dismount and mount guns. After that, they put me to the test. They placed a person in front of me and ordered me to shoot him. I shot him. After that test, they considered me worthy. They gave me a weapon and gun, and told me that I was to lead another group of children. My first task was to attack a village and steal cattle for the base.

We burnt down the village. We killed the cattle and returned to base. Some weeks later, they ordered us to ambush a convoy which was passing through Matuana. We walked for two weeks, from Chokwib to Maluana. When we started to attack, I shot down two trucks and killed two people, but the situation changed when FRELIMO soldiers responded. I was confused. I did not know what to do. We started fighting. I thought it was time to run away. I killed the ammunition chief - I killed

him, together with another chief. Then I took my haversack and witch-doctor's bones, and surrendered to the FRELIMP soldiers. They took me in 'a Matjedje' car to the 8th Brigade, situated in Chokwe. From there they sent me to Xai-Xai. They questioned me for two weeks and then took me back to the 8th Brigade. From there I was taken to Chibuto, and then on to a commandership post. On the way we found cars being attacked and burnt. The FRELIMO soldiers threatened me and accused us of having set fire to the cars. I am very sad about my story, but I had no choice.

(FIGURE 1 An essay by a 14-year-old Mozambican boy - White 1987:14-15).

CHILD SOLDIERS FIGHTING IN AFRICA

Today, more youngsters take up arms than ever before. Studies (incorporating 24 countries worldwide) conducted by the International NGO's Coalition, reveal that more than 300,000 children - both boys and girls - are being used as soldiers, saboteurs, spies, carriers, and 'wives' (Bennet 1998:1). However, if - as is the case in most countries - a child is not considered mature enough to drive a car before the age of 18, can he/she really be considered capable of handling a gun?

In Africa, children have been victims of a vicious cycle of violence. Children, who have lost their families in the chaos, are often recruited as soldiers. According to a report released by the Coalition to Stop the Use of Child Soldiers, the countries most affected are Algeria, Angola, Burundi, Congo-Brazzaville, The Democratic Republic of Congo, Liberia, Rwanda, Sierra Leone, Sudan and Uganda (Brett 1996: 1-10).

According to Donaldson, hundreds of Namibian civilians, including women and children, are being illegally recruited into the Angolan armed forces to fight against the rebel Unita movement in southern Angola (Sunday Times 2000)

Children may begin by doing menial tasks for soldiers, but invariably and end up carrying arms themselves. They may also be forcibly enrolled. In the absence of parental guidance, they have little notion of what is right or wrong. This has been vividly illustrated in Liberia and Sierra Leone, where indoctrinated nine-year-old children have been given weapons and incited to commit atrocious acts, often under the influence of drugs and alcohol. These children, with their own childhood warped and ruined, often inspire greater fear than

their adult brothers-in-arms (Cohn 1994:16-18).

Like their adult counterparts, child soldiers often end up in captivity. They, as well as other children, may be detained because they committed a crime, were caught up in events, or were simply following their parents into jail. According to ICRC figures, about 300 children under the age 15 were detained in Rwanda during May 1995. Some accompanied their parents into detention, while others - some as young as eight - were accused of taking part in the genocide.

Separated families are a common phenomenon during wartime, and unaccompanied children are particularly vulnerable. Their parents may have been detained, or they may have left their children in orphanages or with friends or relatives, in the hope that they would be protected. Very often the smallest are lost in the mayhem, when their parents flee in panic from imminent danger (Human Right Watch 1997:9-59).

For child soldiers involved in armed conflict, the effects are devastating and everlasting (Dodge and Raundalen 1987:109-120).

- Socio-economic effects
Child soldiers often have nowhere to go. Their villages may have been destroyed or their parents may have fled or been killed.
- Educational effects
Schools are burnt, wreaking havoc on education - disruption of the educational system takes place.
- Physical effects
Children are in poor physical condition, usually lice-ridden. Many of the children - especially girls - have also sexually transmitted diseases.
- Psychological effects
Children tend to be depressed, with low self-esteem and a loss of identity. A feeling of hatred and fear is instilled.
- Social effects
Lack of community acceptance.
Children are denied their most fundamental rights by armed conflict. Concrete steps should be taken to end the use of child soldiers throughout the world. The continued use of child soldiers demonstrates the failure of the international community to protect and cherish children.

The world was been shocked by reports of under 18-year-old child soldiers fighting in Africa. Its conscience was shaken by the fact that some of the children were no more than seven years of age. The world has also been confronted by the atrocities committed



ISSOUF SANOGO/AFP

at the hands of child soldiers. These children, who endure the consequences of war more profoundly than any other group, should be a matter of concern for all of us. African children who are targeted as tools of war reflect the brutality of our times, and we have a collective responsibility to put a stop to the process of armament (Rone 1995:5-10).

A young Revolutionary United Front (RUF) fighter in Sierra Leone handles a rocket propelled grenade (RPG) launcher a few miles from the capital, Freetown

DISARMAMENT & THE ARMS RACE

In 1978, the first special session of the UN General Assembly on Disarmament became a historic event, when all the nations agreed that the increase in armaments was, to a much larger extent, a threat to humanity, rather than a way of protecting it. The UN family also agreed that the time had come to end the process of armaments, and the abuse of power in international relations. Instead, it is time to seek security through a gradual, but efficient process of disarmament, to be introduced by a reduction in the present levels of armaments. This is a very important future vision

shared by most governments all over the world. However, while everyone agreed to disarmament, the arms race continues.

The result of using weapons is direct violence. In terms of the number of people killed this way, the period since World War II has been the most violent in human history. Kende et al discovered 159 wars were fought during this period. A shocking 20,000,000 people have been killed since 1945, a figure that amounts to more than the soldiers killed during World War II.

The arms race affects countries internally, as well as relations between nations. The effects, in terms of structural violence, are more difficult to measure than the effects of direct violence.

There are numerous effects of structural violence that need to be looked into.

At a national level, the arms race consumes scarce resources, which could have been used to meet civilian needs. In order to meet the demands of the arms race, the needs of people are not fulfilled. This represents structural violence that affects a large number of citizens within a country. The following could be improved if resources were

transferred from the military: housing, education, health care and public transport.

The research and development industry flourishes alongside the use of resources for armaments. From a global perspective, about 30-40% of total research and development is geared towards military.

The arms race implies that knowledge regarding defence is monopolised by the military. Consequently, only a few have access to vital information necessary for effective decision-making. Hence, the arms race reinforces anti-democratic structures and processes (Haavelsrud 1987:366-369).

The causes are numerous and contradictory. A survey by Wiberg (Haavelsrud 1987:368) suggests three major focal points concerning the causal mechanisms that underly armament dynamics:

- Internal autistic factors within nations;
- Action-reaction explanation;
- Bilateral autism (armament dynamics do not constitute an arms race at all).

Visions of disarmament need to be spelled out in terms of a complete world system of disarmament security, in which conflict can be managed without the use of physical power.

A well-armed young fighter of the United Revolutionary Front in Makot, 150 kilometres from the capital of Sierra Leone, Freetown



SEVILLOU/AFP

A vision of a disarmed world should include answers to questions like:

- In the future, how should conflict be solved without arms, where physical power is reduced or eliminated?
- What implications would a disarmed world have concerning the need for new institutions of conflict regulation and resolution - how would these regulations and resolutions be enforced?
- What implications would a disarmed world have for education?
- What would the characteristics be of alternative security systems?

Another area of inquiry that is necessary for realising a disarmed world is the formulation of tactics and strategies to convince the present armed world to adopt the vision of a disarmed world. This would involve long-term strategies and short-term tactics aimed at bringing about change. Such considerations would have to include appropriate recommendations at all levels of society, ranging from the individual to the transnational level of the United Nations (UN).

Disarmament, development and human rights are probably the most important peace values of our time. Any future scenario should be intricately related to these peace values. All three peace values are interdependent and unified: without disarmament, peace is impossible; without development, human rights are illusory; and without human rights, peace is violence. Peace is attainable only when all three sets of values are considered together (Marks 1983:5-16).

War means terror, it means distress. It is sad to live with this terror and it is sad to have to endure this endless war. Everybody likes to be independent and free. The war being faced by the Mozambican people is an undeclared war. We have had to live in distress ever since the racists began their attacks. They kill people, they burn buses, they steal people's belongings. They destroy everything. The racists are perverse.

All people throughout the world want peace. Peace means the absence of fear. Peace is the common wish among all of us. Racists are people without compassion - they are evil.

(FIGURE 1 A composition by a 11-year-old Mozambican boy (White 1987:32).

RECOMMENDATIONS

- A call for a disarmed world;
- Children should be protected from inhumane conduct during wartime;

- Governments and those who hold power should be challenged to end abusive practices and respect international human rights laws;
- Concrete steps should be taken to end the use of child soldiers;
- Educational and specific cultural activities need to be pre-planned in order to help the children who have had direct experiences as child soldiers;
- Integration programmes should be developed and implemented for child soldiers.

CONCLUSION

If the world wants to prevent the use of child soldiers in both Africa and other countries around the globe, then disarmament is probably one of the most important issues of our time. Without disarmament, peace is impossible. Perhaps some day, if peace comes, the scars of death will begin to fade. However, they will never fully heal. 🗿

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PIUS UTOMI EKPE/AFP

Preventing and Coping with
HIV/AIDS in Post Conflict
Societies: Gender-Based Lessons
from Sub-Saharan Africa

AIDS

BY SENZO NGUBANE

aids

in post conflict societies

A symposium, which brought together a selection of Africans engaged in governmental and non-governmental activities to combat HIV/AIDS in post-conflict societies, was held in Durban recently. Participants explored the commonalities in their approaches and distilled the best practice benchmarks for preventing and coping with HIV/AIDS in post-conflict societies.

In 1999, half the ongoing armed conflicts in the world were located in Sub-Saharan Africa, and involved two-thirds of the countries located with the region. A total of six high intensity conflicts (which caused more than a thousand deaths per year) were still raging late into the year 2000. In addition, more than 25 million people (or nearly 70% of those infected with HIV/AIDS globally) and 90% of deaths from AIDS are to be found in

Sub-Saharan Africa, which is home to just 10% of the world's population.

Although there is little cross-country epidemiological data available, there is evidence to suggest that conflicts increase the risk and impact of HIV/AIDS in several ways. Conflicts dislocate communities, create flows of refugees and internally displaced persons, and seriously disrupt family life. They also bring soldiers and fighters into contact with civilians in situations where women, and young girls and boys, are highly vulnerable to sexual exploitation and violence. The breakdown of basic services, as well as psychosocial stress, compound the situation.

Prior to the Durban symposium, there was no established set of practices to guide policy and programming aimed at addressing HIV/AIDS in post-conflict countries. There are, however, many



initiatives. All across Africa, people from all walks of life - especially women - are engaged in formal and informal initiatives. These initiatives not only strengthen the coping capacities of families, communities, and countries that are facing these crises, but they also contribute to the creation of environments that enhance human security in all its dimensions.

To tap into this experience, Tulane University's Payson Center for International Development and Technology Transfer, and the African Center for the Constructive Resolution of Disputes (ACCORD), in collaboration with USAID's Africa Bureau Conflict, Mitigation and Recovery Division, hosted the symposium 'Preventing and Coping with HIV/AIDS in Post Conflict Societies: Gender-Based Lessons from Sub-Saharan Africa', during March 2001. The symposium was held in Durban, South Africa.

The symposium sought to provide an overview of the gender-sensitive practices aimed at preventing and coping with HIV/AIDS in communities facing the aftermath of violent conflict. The purpose of the symposium was to identify interventions and strategies that could empower men and women, recently affected by violent conflict, to address or engage more effectively in HIV/AIDS prevention. It also aimed to explore the practical implications of HIV/AIDS prevention and control in building a sustainable peace.

Participants called for a revision of policies, strategies and programmes aimed at fighting the twin scourges of violent conflict and HIV/AIDS in order to achieve sustainable peace. They felt that this should be achieved by:

- Mainstreaming interventions into all sectoral programmes;
- Empowering women as key actors and community mobilisers to address both HIV/AIDS and conflict resolution/peace-building;
- Devising a holistic conceptual framework;
- Recognising that conflict and HIV/AIDS will require behavioural change;
- Necessitating that approaches must address the problems of stigma and shame;
- Including, as a priority, psychosocial care for those affected by conflict and HIV/AIDS;
- Giving special consideration to vulnerable groups;
- Requiring broad and strategic partnerships;
- Embracing the importance of regional and locally-tailored solutions;
- Networking, dialogue and cooperation;

- Mainstreaming conflict, gender and HIV/AIDS strategies and programmes within the broader post-conflict development, democracy and governance framework;
- Enhancing present programmes by making medical treatment affordable and accessible, and by providing services that alleviate their suffering and protect their human rights.

Recommendations

Based on discussions at the symposium, participants recognised that conflict, HIV/AIDS and gender were inextricably linked in Sub-Saharan Africa and recommended:

- That all conflict programs adequately address the issues of HIV/AIDS, poverty and gender in Sub-Saharan Africa;
- That the proceedings of the symposium be widely disseminated to the practice and policy community, including donors, international organisations, non-governmental organisations (NGOs), including religious organisations and governmental sectors, with the inclusion of the military;
- That practical tools be developed to support the programming approaches articulated above, in order to address the problems of HIV/AIDS and conflict/crisis through gender-based strategies;
- That donors increase resource levels in support of programmes to address these critical problems through a process of regular consultation that facilitates strategic partnerships, community ownership and mutual accountability;
- That there be increased donor coordination, programming and a streamlining of requirements;
- That all of the actors involved in addressing these problems utilise intersectoral approaches that address the complex inter-relationship between conflict, HIV/AIDS, poverty and gender roles;
- That mechanisms be put in place to build a learning network of professionals and workers, in order to improve the quality and efficacy of programmes, as well as to increase advocacy for these issues;
- That empowering women, and addressing the root causes of their vulnerability, is key to preventing and coping with HIV/AIDS. 🗑️

A Hydropolitical Security
Complex and its relevance to
the SADC region



BY A.R. TURTON

FEATURE

water

wars

The African continent is characterised by the fact that a large number of river basins are shared by more than one country. This is particularly relevant in light of the fact that water scarcity is already becoming a development constraint for many African countries. With this in mind, it becomes pertinent to explore ways in which international river basins could be developed in such a way that is both peaceful and fair to the respective riparian states.

Recent research work published under the editorship of Swedish researcher, Dr. Leif Ohlsson, has served to introduce a few valuable new concepts that could be applied to the hydropolitics of Africa. Dr. Barry Buzan has called the overall concept a 'Regional Security Complex'. In essence, the complex is defined as a group of states whose primary security concerns are linked together sufficiently closely that their national securities cannot realistically be considered apart from one another.

As such, a Regional Security Complex is normally conceived of as an interstate system defined by the patterns of amity and enmity that are substantially confined within some geographical area. A more refined version of Buzan's Regional Security Complex is the 'Hydropolitical Security Complex', as envisaged by Schulz. He defines this as including those states that are geographically part 'owners' and technically 'users' of shared rivers. Consequently, they all consider the rivers as a major national security issue. While this definition is useful for the political scientist at a theoretical level, the reader may question the degree to which most shared river basins would be regarded as 'a major national security issue' in Africa. When answering this question, three case studies immediately spring to mind.

The first case can be regarded as a hydropolitical classic within an African context, and is centred on the Nile River Basin. The basin is shared

FEATURE

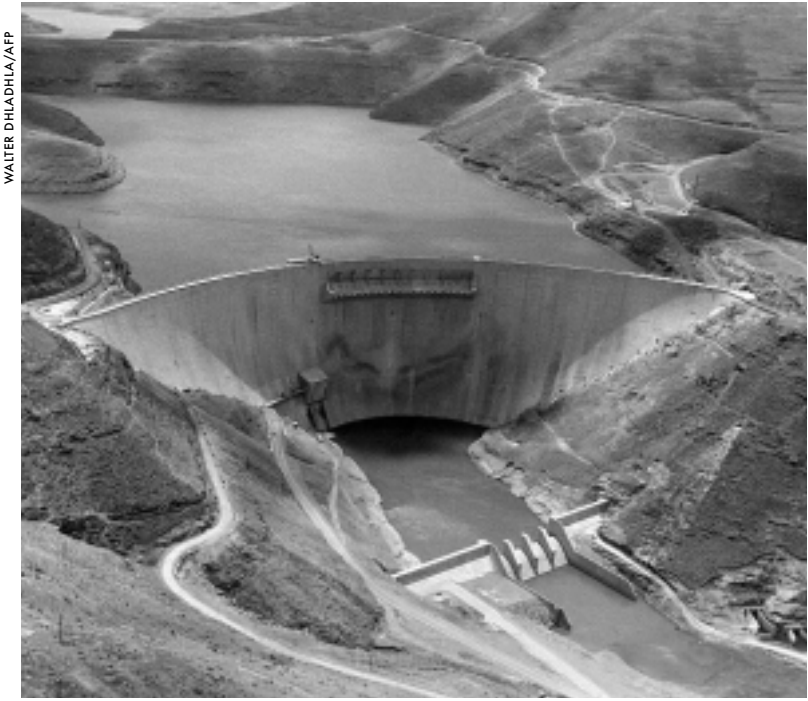
between 10 riparian states, five of which are amongst the 10 poorest states in the world. The downstream state is Egypt, which is totally reliant on the Nile River water for its survival. The river basin is characterised by the fact that the rainfall which supplies the streamflow originates in an upstream country, and is thus out of the control of the most dependent downstream user - Egypt. Ethiopia is one of the upstream states, and it alone contributes about 86% of all of the water that eventually becomes Nile streamflow. The Nile River Basin is characterised by an asymmetric power configuration, with the most downstream riparian regarding the Nile as a vital national security interest. It is also from this river basin that a lot of the so-called 'Water War' rhetoric has emerged in the past, along with the belief that the wars of the 21st century will be fought over water originating from this area. So, in this case, it could be argued that the Nile River Basin is, in fact, a Hydropolitical Security Complex because the water issues that have been raised within this context can only be solved by cooperation amongst the respective co-basin states. It could even be argued that peace within the basin could result in a water-sharing agreement between all riparian states - something that has never been achieved to date. While this is probably a desirable state of affairs for commentators who are interested in promoting peace, it would probably not be considered a desirable con-

Lesotho's Katse Dam which forms part of the Lesotho Highlands Water Project, with underground tunnels designed to carry Lesotho's most precious resource to South Africa's thirsty industrial heartland

dition by Egypt because it would mean the water allocated to other states would, in effect, mean less water for Egypt's own use.

The second case could also be viewed in a similar vein. The Orange River Basin is the most important one for South Africa. Consequently, it is also the most developed basin. The Orange River Basin is shared between three countries: Lesotho, South Africa and Namibia (although Botswana is also within the geographic confines of the basin). The Botswanan case is interesting because it is a riparian state only by virtue of being on a tributary that normally flows once in a lifetime. As such, Botswana contributes little if any streamflow. However, it has riparian rights by virtue of international law. The basin is characterised by two sets of water-sharing agreements: the Lower Orange is shared between South Africa and Namibia; whereas the Upper Orange is shared between Lesotho and South Africa. The unrest in Lesotho during 1998 - which ultimately culminated in a military intervention by South African forces - saw two distinct areas of military deployment. The first was within the capital city of Maseru, and the second was around the Katse Dam Complex. While this was not a so-called 'Water War', the very fact that South Africa deployed military forces around the Katse Dam area, gives an indication that she considers this installation to be important enough to defend militarily. It could probably best be regarded as an emerging Hydropolitical Security Complex. ORACOM has been introduced as the basin-wide management regime and existing bilateral arrangements have to be somehow accommodated within this emerging institutional arrangement.

The third case is one that is starting to draw a lot of attention at an international level. It is focussed on the Okavango River Basin, which is shared between Angola, Namibia and Botswana. This hydropolitical power configuration is interesting for a number of reasons. Both of the downstream states - Namibia and Botswana - are very water scarce countries, and only have perennial rivers located on their borders. In other words, neither Botswana nor Namibia have permanent rivers on their sovereign territory. The only exception is the Okavango, which, in both cases, flows for a short distance only. A squabble originally erupted between Namibia and Botswana after Namibia announced its intention to build a pipeline in order to abstract water from the Okavango River near Rundu. The water would be used to supplement the supply to the Eastern National Water Carrier near




WALTER DHLADHLA/AFIP

Grootfontein. Professor Peter Ashton notes that the proposed abstraction scheme raised fears in Botswana about possible adverse long-term effects to the Okavango Delta. The good rains that fell in the late 1990's served to reduce tensions, but the basic issues still remain - Namibia has a critical need to augment its water supply during periods of drought, and the only water it can claim for this purpose is from the Okavango River, to which Namibia has legitimate riparian rights. From an analytical perspective, this case is most interesting due to the following reasons:

- Namibian economic growth and prosperity is being severely limited by water scarcity. This automatically raises the issue to a level of strategic concern.
- The same can also be said of Botswana. In Botswana, the newly completed North-South Carrier Project is a major feat of hydraulic engineering, but if the economy continues to grow as it is currently doing, then existing water supplies will be insufficient to sustain that growth, thereby elevating water scarcity to a national security issue.
- Both of these states are dependent on the whims of the upstream riparian. In this case, Angola's economic development is being hampered due to the ongoing civil war. One can thus expect that peace in Angola will result in rapid development of the upper reaches of the Okavango River Basin, which, in turn, will impact negatively on both Namibia and Botswana. In this case too, water development can be considered as a pressing issue of national importance. Who can deny that post-war Angola will need massive economic development if it is to ever reconstruct itself as a functioning state? That development will need water, a resource that Angola is richly blessed with.

This is not being factored into the overall hydropolitical equation at present, with Namibia behaving as if it were the upstream riparian state. This is true if a Namibia-Botswana configuration is the unit of analysis. However, it is certainly not true within the context of the whole basin. In fact, it can be argued that the Okavango River Basin is a rapidly emerging Hydropolitical Security Complex within the SADC - even surpassing the Orange River Basin - due to the high reliance that both of the downstream states have on the water. If this fact were to be recognised by all of the role players, then negotiators within OKACOM (the River Basin Commission that is responsible for the management

of the Okavango River Basin) may change their behaviour accordingly. The fact that Namibia is starting to view water as a strategic issue could also be found in the mooted water transfer scheme that would see water from the Zaire River Basin being transferred into both the Kunene and Okavango Rivers some time in the future. This scheme will depend on peace in Angola, as the infrastructural hardware would be open to sabotage.

It therefore seems evident that the notion of a Hydropolitical Security Complex is a useful one to consider within the conflict resolution context of Africa. It is also expected to become a more widely used concept within the SADC in the future, when the SADC Water Protocol starts to be implemented by various member states. To this end, developments around the Okavango River Basin are likely to lead the way, with the Orange River Basin in close second place. A strong stimulus for the recognition of this fact could be anticipated with the onset of the next regional drought. If a Hydropolitical Security Complex is implemented within the respective international river basins in the SADC, then the conflict potential would be mitigated by virtue of the institutionalisation of the issue. Consequently, all water scarcity related conflict would be reduced to manageable proportions. 

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BENOIT DOUPRAGNE/AFP

Prospects for African
Economic Development in the
light of MARP

FEATURE

BY MAXI SCHOEMAN

economic renaissance

The outline of the Millennium African Renaissance Programme (MARP) was introduced to the world's top political and business leaders at the annual World Economic Forum in Davos, Switzerland. President Thabo Mbeki made the presentation, which took place in late January. Although at least four other African leaders - Nigeria's Obasanjo, President Bouteflika of Algeria, Sengal's Wade and President Mkapa of Tanzania - are co-authors of the programme, it is clear that President Mbeki is taking the lead. In fact, analysts point out that South Africa's own economic programme is being used as the foundation for MARP. This is not surprising, as the country has continued to impress the international community with its economic performance, particularly its very tight fiscal and financial discipline, as well as the extent of its trade liberalisation. What is still missing is large scale, direct foreign investment,

and this will probably only start flowing into the country (and the rest of the continent) once South Africa's example is followed by the majority of its African neighbours. Consequently, the success of MARP is crucial, not only to the continent's future, but also, and especially, to South Africa.

The priority areas covered in MARP include:

- the creation of peace, security, stability and democratic governance;
- comprehensive human resource development;
- the development of Africa's strategic and comparative advantages, which are largely located in the resource-based sectors - such development would then underpin an industrialisation strategy;
- bridging the technological divide;
- the development of infrastructure;
- the development of financing mechanisms.

Before introducing MARP at Davos, Mbeki himself referred to it as a 'Marshall Plan' for Africa, and

suggested that it was akin to the Allied programme for reconstruction of Europe following the continent's devastation during the Second World War. The African situation, however, differs vastly from that of the European scenario of the late 1940s.

The first, and arguably the most crucial difference, is that the Marshall Plan was aimed at a region where peace had been created. The Marshall Plan was designed and implemented with the objective being post-conflict reconstruction. It also served to support the stability and security of Western Europe. In terms of peace, security and stability, Africa is nowhere near the take-off point that Western Europe enjoyed in this regard. Numerous internal armed conflicts, often involving neighbouring countries - and all of them having spill-over effects into sub-regions of the continent - continue to rage. A number of states are states in name only - the Democratic Republic of Congo (DRC) and Somalia, for instance, are failed states, with no indication of normality. There is no hint that genuine peace and stability will return to these territories in the near future. Under these conditions, it is difficult to imagine the international community investing in the continent on a large scale, even though it is estimated that Africa offers an exceptionally large return on investment - about 30%.

Consequently, the biggest challenges the continent will face in its attempts to attract foreign investment to jump-start MARP, were highlighted in Mbeki's Davos speech, and include 'creating peace, security and stability, and democratic governance...' Contrary to the European experience regarding the Marshall Plan, Africa needs to implement its recovery plan, while in the midst of armed conflicts - it does not have the luxury of starting with a 'clean slate' in terms of focussing on post-conflict development. It has to develop, and at the same time, try to make peace - it must then maintain its security and stability.

The second difference between contemporary Africa and Western Europe after the Second World War, is that the late 1940s saw the onset of the Cold War which was, in essence, a fierce ideological struggle between two blocs - the West against the USSR. During this period, economics was subordinate to political objectives and a superpower, such as the United States, was willing to throw huge amounts of money at its allies in order to contain the spread of communism. However, the wheel has turned and in the early twenty-first century, the name of the game is money-making, not lofty political and ideological ideas or commitments. There is

no big ideological clash that needs wholesale (and often irresponsible) financial backing to support a doctrine of containment. The question is whether conditions are conducive to making profits. If the answer is no, investment turns somewhere else. As Thomas Friedman, author of *The Lexus and the Olive Tree*, puts it: 'the historical debate is over. The answer is free-market capitalism' and the 'defining political-economic garment is the golden straitjacket', which is summarised in the IMF's conditionalities for structural adjustment loans.

Africa no longer holds political attraction for super or major powers. Its value is perceived and judged in terms of a return on investment, and the guideline is the extent of stability and predictability that would facilitate economic growth (and profits) for investors. What investors *think* is clear from the figures: Africa receives only 1% of direct global foreign investment, and it receives less than 5% of investment going to emerging markets.

The third difference lies in the systems of government. Western Europe succeeded in making the Marshall Plan work for all because of the large degree of homogeneity adopted or continued within the political systems. States which did not democratise were excluded from the 'new Western European club', and included Spain, Portugal and Greece. It was only after these southern European countries had democratised (no doubt encouraged by the prospect of being admitted into the lucrative European common market), that they became members of what is now called the European Union (EU). This 'sameness' made regional governance and cooperation possible, and later, the integration of Western Europe within the EU.

In Africa, there are huge differences between the political systems of most states. Without a culture of democratic governance and large-scale popular participation in political and economic life within transparent and efficient state structures, cooperation and integration become problematic. The MARP does imply that some form of 'democratic compliance' will be necessary in order to be considered for membership. Yet, it would appear that there is no clear and common view amongst African leaders as to what exactly democracy entails. Will Zimbabwe be allowed to become a member? Or Uganda?

A fourth difference, and one that again poses a huge challenge to Africa, is to find a way to ensure genuine economic development (as opposed to mere economic growth). At the end of the Second World War, Europe was a region that had seen huge



ALESSANDRO DELLA VALLE/AFP

The president of South Africa, Thabo Mbeki speaks to a panel session about diseases caused by poverty, at the Annual Meeting of the World Economic Forum

economic and human destruction take place within a period of six years. The industrial revolution had started in Europe two centuries earlier, and the knowledge and skills accumulated during that time were not wiped out during the war. Physical infrastructure had been devastated, and many industries had been diverted in order to fulfill war-time production needs. Yet, it was possible to build on a 'collective memory' of know-how, and return industrial capacity and production to fulfill peace-time needs. Africa still has to find its growth path. It cannot continue to depend on primary commodities. It needs to catapult the continent and its people into the twenty-first century's hi-tech global economy.

This is no easy task. Mbeki realises all too well that the digital divide will have to be wiped out - there are fewer phone lines in Africa than there are in Manhattan. Looking at the success that India has had by becoming the 'back office' for many huge corporations, it is clear that what we urgently need are telephone lines, or an equivalent thereof. Africa needs infrastructure and, as MARP also makes clear, huge investment in human resources. Europe had a market and skilled people. It needed investment to bring the two together, and that was what the Marshall Plan offered. Africa has a small market because the people do not have buying power. They also need skills and training. Consequently, it needs 'prior-to-production' investment to develop human resources. At the same time, it needs to put money into people's hands in order to create markets/economies of scale. This kind of investment implies a long-term commit-


ment, and it may take a long time for investors to see a return on their capital.

When Mbeki refers to the need for a 'Global Partnership' in order to make MARP succeed, he refers to (in my understanding) the need to make a threefold deal with the rest of the world. International governments will have to support Africa by means of continued aid. However, that aid should be structured in such a way that it will ensure and support two things: building infrastructure and investing in people, including health facilities, and affordable drugs and vaccines. International business will have to contribute to this partnership by means of investment in African economic ventures. Initially, the focus should perhaps be on the privatisation and modernisation of existing (but often failing) industrial and other manufacturing sectors. In addition, multilateral institutions will have to force the North to put their money where their mouths are and genuinely liberalise their own markets. Africa, and other countries in the South, cannot play the liberalisation game on their own by continuing to remove subsidies and protective measures, while Europe continues to subsidise their farmers to the tune of US\$300 billion per year. The United States slams import taxes on South African steel whenever we seem to offer serious competition to its own steel producers. Furthermore, international or multilateral institutions will have to develop protocols and rules to regulate and monitor Africa's lucrative extraction industries. At the moment, these sectors are often used to finance bloody armed conflicts, rather than

turning information into action

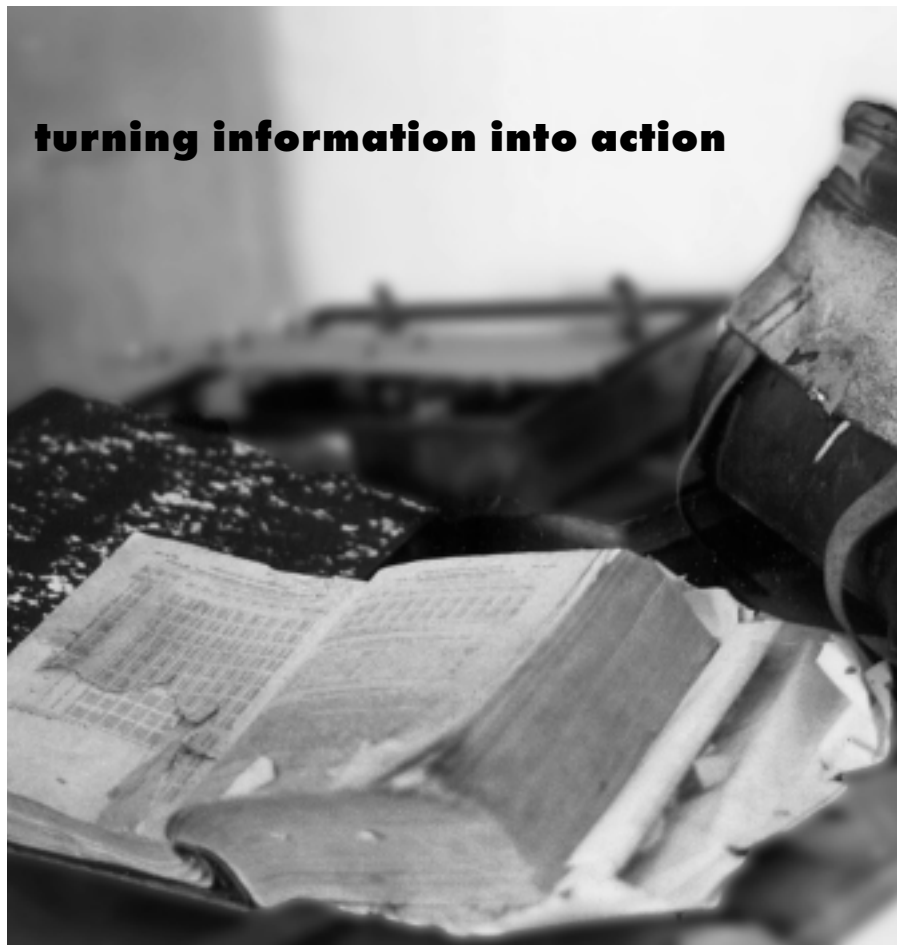
generate the necessary domestic savings that would underpin the industrialisation of the continent.

In some ways, contemporary Africa represents renaissance Europe, rather than post-Second World War Europe. The European renaissance had three main characteristics. The first characteristic was long drawn-out wars that eventually gave way to the consolidation of the modern state system, as well as the development of democracy as the preferred way of organising political life. There are those scholars who believe contemporary African wars are something akin to the European renaissance period - that it might be an indication of state-making. The second was the devastation brought about by the Black Death (bubonic plague), which killed about 25% of Europe's population. The current decimation wreaked by HIV/AIDS is reminiscent of the Black Death era. In the southern African region, there is not a single state with an infection rate of less than 22%, and over the past decade, about 17 million Africans have died as a result of HIV/AIDS or its related diseases. As in the case of the Black Death, poverty also plays a role in the spread and control of this disease.

The third characteristic of the European renaissance was the fierce search for knowledge and a renewal (*along the lines, but not an exact replica*) of a golden past (largely romanticised) from long ago. Galileo did not seek to re-instate Aristotle's scientific-philosophical reign. Instead, he chose to build on it. This is exactly why the man ran into trouble with the church - he no longer found the 'world according to Aristotle' plausible; he found it useful to build on, but not sufficient. In addition, he sought to improve on existing knowledge by introducing a new scientific method - that of empiricism. In other words, he wished to observe what was happening in the world around him, and not just summarise grand theorems built on reflection, without concrete proof. In the process, he had contact with and assistance from many scientists far from his corner of Italy. Africa's people and leaders need to draw on their own golden past - however romanticised - to draw courage and examples for its own quest. However, it also needs the input from those 'far away' in order to realise its own renaissance. 

Endnote

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Ongoing monitoring of all conflict situations across Africa is undertaken on a daily basis to generate ACCORD's Conflict Watch and Renaissance Barometer reports. In-depth situation reports are also compiled in response to the requirements of ACCORD's directorate. The Preventative Action Programme analyses the information gathered on each of the SADC countries on a monthly basis as part of ACCORD's conflict update series. These country reports cover conflict indicators and occurrences in the region and serve as a basis for developing intervention strategies.





JEAN-PIERRE KSIAZEK/AFP

Examining the establishment of the Special Court, its structure and jurisdiction, and how it differs from its predecessors, as well as the specific legal issues involved

SIERRA LEONE

BY BORIS KONDOCH AND RITA SILECK

special court for sierra leone

The last decade witnessed great achievements in the field of constructing credible institutions of justice in the aftermath of genocide, war crimes and crimes against humanity. In 1993, the United Nations (UN) Security Council established Resolution 827 - the International Criminal Tribunal for former Yugoslavia (ICTY) - which was the first international criminal tribunal since Nuremberg and Tokyo. A year later, the Security Council established Resolution 955 - the International Criminal Tribunal for Rwanda (ICT). In July 1998, a UN diplomatic conference in Rome adopted the statute for the permanent International Criminal Court (ICC).

Since then, the establishment of international criminal tribunals has been promoted in many cases, in order to address serious violations of international law committed during conflicts. Examples include the genocide in Burundi; the atrocities associated with the Pol Pot regime in

Cambodia; and the referendum in East Timor.

The latest development concerns the initiative between the Security Council and the Sierra Leone government. The aim is to set up a war crimes tribunal in Sierra Leone, whereby perpetrators of the most serious violations of international law are brought to justice. Unlike the ICTY and the ICTR - which were established by legally binding Security Council Resolutions under Chapter VII of the UN charter - the legal basis of the so-called Special Court for Sierra Leone is an agreement between the government of Sierra Leone and the UN.

Background

Sierra Leone's civil war started in 1991, and involved conflict between government forces, the Revolutionary United Front (RUF) and other rebel groups, such as the Armed Forces Revolutionary Council (AFRC). From its very beginning, the conflict was marked by numerous massacres and

A mother, whose hand was cut by rebels of the Revolutionary United Front (RUF) feeds her child at the Handicap International camp in Freetown, which shelters the victims of mutilations perpetrated by RUF rebels



atrocities committed against civilians, including children and women. The RUF has been responsible for the killing, rape and mutilation of thousands of Sierra Leonean civilians².

A temporary end to the hostilities was brought about by the Lome Peace Agreement, concluded on 7 July 1999, between the RUF and the Sierra Leone government. The Peace Accord obliged the rebels to lay down their arms, and in exchange, they were guaranteed representation within the government. Furthermore, the agreement called for the establishment of a Truth and Reconciliation Commission (TRC). However, the conflict resumed some months later, and since then, serious human rights violations have been reported.

In order to end the cycle of violence, the Sierra Leone government sought the assistance of the UN, requesting that a court be set up to bring to justice perpetrators of the most serious violations of international humanitarian law. On 14 August 2000, the Security Council requested - in its Resolution 1315 (2000)³ - that the secretary-general enter into negotiations with the Sierra Leone government regarding the establishment of a Special Court for the country. On 5 October 2000, the secretary-general submitted a report regarding the issue. The document contained an agreement between the UN and the Sierra Leonean government, the draft statute of the court, as well as the secretary-general's commentaries regarding the agreement and the statute⁴. As the court is still not completed, this article will follow developments until the end of February 2001.⁵

Composition of the Court

In his report, the secretary-general proposed a Special Court, which would consist of three organs: the Chambers (two Trial Chambers and an Appeal Chamber); the Prosecutor's Office; and the Registry. This structure follows that of the ICTY and the ICTR. The Trial Chambers will be composed of three judges, each of whom will be appointed by the Sierra Leone government. Another two judges will be appointed by the secretary-general, upon nominations by members of the Economic Community of West African States and the Commonwealth. The Appeals Chamber will be composed of five judges: two will be appointed by the Sierra Leone government, while another three will be appointed by the secretary-general, upon nominations made in the above-mentioned way.

In its Resolution 1315 (2000), the Security Council requested the secretary-general to address

the appeals process and the 'advisability, feasibility and appropriateness of an appeals chamber in the special court, or of sharing the Appeals Chamber of the International Criminal Tribunals for the former Yugoslavia and Rwanda'. The secretary-general rejected the idea of sharing the Appeal Chamber of the ICTY and ICTR, arguing that the Appeals Chamber was already overburdened and struggling with an enormous workload. He claimed that sharing could either bring about the collapse of the appeals system, or could cause unacceptable delays in the procedures, which would be inconsistent with human rights standards. However, in Article 20, paragraph (3) of the draft statute of the court, it states that the Appeals Chamber of the court 'shall be guided by the decisions of the Appeals Chamber of the International Criminal Tribunals for the former Yugoslavia and Rwanda'.

The judges will be appointed for a four-year term, and will be eligible for reappointment. The secretary-general's report also envisaged so-called alternate judges - appointed by the Sierra Leonean government or by the secretary-general - to be present throughout the trial, and to replace ordinary judges if they are unable to continue hearing the case.

After considering the secretary-general's report, the Security Council rejected the idea of setting up two Trial Chambers. It proposed that the court start its work with one Trial Chamber, with the possibility of adding another at a later date, depending on the workload of the court. The Council also decided to defer the question of appointing alternate judges until the need arose. It considered them unnecessary, as neither the International Criminal Tribunal for the former Yugoslavia, nor the International Criminal Tribunal for Rwanda, had alternate judges.

The prosecutor of the court will be appointed by the secretary-general, with a Sierra Leonean deputy appointed by the Sierra Leonean government. They will each sit for a four-year term. The selection of an international prosecutor is expected to guarantee the independence, objectivity and impartiality of the court.

The registrar of the court will be appointed by the secretary-general, and will be responsible for servicing the Chambers and prosecutor's office. He will also be responsible for the recruitment and administration of staff, as well as the administration of financial recourses.

Subject matter jurisdiction

The Security Council recommended that the subject

matter jurisdiction of the court should include: crimes against humanity; war crimes; other serious violations of international humanitarian law; and crimes under relevant Sierra Leonean law, committed in Sierra Leone. The draft statute in the secretary-general's report also includes these four crimes.

The Security Council did not include genocide in its resolution, and the secretary-general also decided to leave it out because of a lack of evidence that massive and large-scale killing had been committed against national, ethnic, racial or religious groups, with the intent to destroy the group.

In order to fully respect the legality principle, the principle of *nullum crime sine lege*, and the prohibition of retroactive criminal legislation, those international crimes were listed in the draft statute and are considered part of customary international law.

The wording of Article 2 on crimes against humanity⁶ follows that of the ICTY and ICTR statutes, although it does rely more on the Rwanda Tribunal, which does not require a nexus between crimes against humanity and the armed conflict. The Rwandan and Sierra Leonean statutes also explicitly enumerate sexual slavery, enforced prostitution and forced pregnancy, as well as other forms of sexual violence. However, the Yugoslavian statute names only rape - the other sexual crimes are covered by the prohibition on 'other inhumane acts'.

Violations of Article 3 common to the Geneva Conventions, as well as Additional Protocol II contained in Article 3 of the draft statute, cover the crimes enumerated in common Article 3 of the Geneva Conventions and in Article 4 of Additional Protocol II. They were incorporated into the draft statute because both articles apply to non-international armed conflicts, and are therefore applicable to the civil war in Sierra Leone. The violations contained in Article 3⁷ of the draft statute are also regarded as international crimes under customary international law.

Article 4 details the other serious violations of international humanitarian law.⁸ The prohibition on the attack of civilians reflects the fundamental and customary rule of international humanitarian law, which requires that a distinction be made between civilian and military objects, thereby sparing the former. The protection provided for peacekeepers is also based on the distinction between peacekeepers as civilians and peacekeepers as combatants - for the first time, it was explicitly established as an international crime within the statute of the International Criminal Court. By protecting the

peacekeepers against attacks, Article 4 specifies a targeted group within a generally protected group of civilians, and grants them special protection. However, the secretary-general emphasised that specifying the attack of peacekeepers as a crime, does not imply that it is a more serious crime than attacks against civilians.

The prohibition on conscripting and enlisting children under the age of 15, as well as the possibility of using them actively in hostilities, is dealt with in Article 4, paragraph 3 (c) of Additional Protocol II - it stipulates that children under the age of 15 shall not be recruited into the armed forces, and will not be allowed to take part in hostilities. This prohibition is repeated in the 1989 Convention on the Rights of Child (Article 38, paragraph 3) and in the statute of the International Criminal Court (Article 8, paragraph 2 (b)(xxvi) and (e)(vii)), which even qualified it as a war crime. In his report, the secretary-general stated that the prohibition of child recruitment had gained customary law status. However, it is unclear as to whether it is customarily recognised as a war crime, entailing the individual criminal responsibility of the perpetrator. The provision on child recruitment within the draft statute of the court follows the definition laid down in the statute of International Criminal Court.

Article 5 incorporates certain crimes under Sierra Leonean law, thereby extending the jurisdiction of the court to crimes which are, because of their specific aspects, not inadequately regulated under international law. One of the relevant acts is the 1926 Prevention of Cruelty to Children Act, from which offences relating to the abuse of girls were incorporated into the statute. The other act relied on is the 1861 Malicious Damage Act, from which offences relating to the wanton destruction of property were taken.

In the case of international crimes, the elements of crimes are governed by international law. In contrast, crimes committed under Sierra Leonean law, are governed by Sierra Leonean criminal law. The rules of evidence will also differ, according to the nature of the crimes.

Personal jurisdiction

Article 1⁹ of the draft statute, which covers the competence of the court, and Article 7, which details the jurisdiction over persons of 15 years of age, regulate the personal jurisdiction of the court. Subparagraph (a) of Article 1 limits the focus of the court to those who bear the greatest responsibility



Hundreds of protesters gathered outside Sierra Leone rebel leader Foday Sankoh's residence in Freetown during a demonstration against his rebels.

for serious violations of international humanitarian law and Sierra Leonean law, as well as those who played leadership roles during the course of the Sierra Leonean conflict. The secretary-general and Security Council's interpretation of 'leadership role' does not restrict the possible circle of indictees to political and military leaders only. It is no test criterion or jurisdictional threshold, but it serves as a guide to the judges and prosecutor in terms of prosecutorial policy.

The Security Council also inserted within Article 1 the sub-sentence 'those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone', thereby further guiding the court in its work. According to the interpretation of the secretary-general and Security Council, this phrase is not an element of the crime, but another guideline for the prosecutor and judges. Consequently, the commission of any crime in the draft statute, which does not threaten the establishment or implementation of the peace process, will still be the criminal responsibility of the perpetrator.

Subparagraph (b) and (c) of Article 1 extends the jurisdiction of the court to crimes committed by peacekeeping personnel in Sierra Leone during the conflict. It states that those states which sent peacekeeping personnel, have primary jurisdiction over the peacekeepers. However, the court is authorised to prosecute members of the peacekeeping personnel for the commission of crimes

falling into the jurisdiction of the court, if the state that sent the personnel is unwilling or unable to prosecute the perpetrators.

One of the major and most problematic issues during the negotiating and drafting process was the question of juvenile perpetrators. The Sierra Leonean conflict was notorious for using child combatants. According to UNICEF, about 5,000 children participated in the civil war. Children were abducted, forcibly recruited, sexually abused, reduced to slavery and trained - often by using psychological and physical abuse and duress - to kill and commit other violent and cruel acts.

The question of child prosecution was discussed in detail by the Sierra Leone government and the UN. Non-governmental organisations and institutes engaged in child-care and rehabilitation programmes also participated in the debate. The Sierra Leone government and representatives of Sierra Leonean civil society expressed their wish to set up a process of judicial accountability for child soldiers. In contrast, international and national non-governmental organisations of child-care and rehabilitation objected to any kind of judicial accountability for children below 18 years of age, fearing that the trials would endanger the children's rehabilitation programme. Article 7¹⁰ extends the jurisdiction of the court to persons over the age of 15. For children between 15 and 18, the statute guarantees special treatment, taking into account the young age, as well as the desirability of

the perpetrator to be rehabilitated and reintegrated into society.

The Security Council holds the view that the Truth and Reconciliation Commissions should play a major role in the case of juvenile offenders.

Temporal jurisdiction

The Court's temporal jurisdiction runs from 30 November 1996 (the date of the conclusion of the Abidjan Peace Agreement, which is the first comprehensive peace agreement between the Government of Sierra Leone and RUF), and does not, therefore, cover the entire Sierra Leone conflict. The end of the temporal jurisdiction will be later agreed upon by the UN and the Sierra Leone government. The parties chose this date because, in their opinion, the selection of an earlier date would have made the investigation too burdensome for the court and prosecutor. However, this decision has been criticised - and with good reason - by human rights organisations, because perpetrators of atrocities committed between 1991 and 1996 will never face trial.

Procedural questions

The court will apply, *mutatis mutandis*, the Rules of Procedure and Evidence of the ICTR (Article 14). However, the court's judges may amend the rules or adopt new rules if the Rules of Procedure and Evidence do not adequately address certain problems.

The rights of the accused (Article 17) have been carefully drafted, containing the guarantees laid down in the human rights treaties.

The convicted person also has the right to appeal against the judgment, and in case new evidence is discovered after the proceedings - which could have been decisive for the court in reaching its decision - the convicted person may request that the judgment be reviewed (Articles 20-21).

The seat of the Special Court

The Special Court is expected to have its seat at the headquarters of the UN peacekeeping operation in Freetown.

Penalties and the enforcement of sentences

Like the ICTY and the ICTR, the Special Court is authorised to impose prison sentences, but no death penalty, upon convicted persons. Imprisonment would normally be served in Sierra Leone. However, according to Article 22, sentences may also be enforced in third countries,

under certain circumstances.

The legal impact of amnesties granted under the Lome Agreement on the Court's jurisdiction

One of the legal dilemmas concerning the Special Court is whether the court's subject matter jurisdiction and temporal jurisdiction can be reconciled with the amnesties given under the Lome Agreement. On the one hand, the granting of amnesties is generally not prohibited under international law, and is a long established practice at the end of civil wars¹¹. On the other hand, the UN maintains that amnesties do not apply to genocide, crimes against humanity, or any other serious violations of international law. This position has been reaffirmed by Article 10 of the draft statute. However, under international law, amnesties are only invalid in cases of international crimes which give rise to an obligation of *aut dedere aut iudicare* - that is, to prosecute or extradite. Such a duty follows from the Genocide Convention of 1948 and the Torture Convention of 1984¹². However, it is questionable as to whether this obligation exists in respect of crimes against humanity, and it becomes even more problematic when regarding war crimes committed during an internal conflict¹³. The duty to extradite or prosecute clearly does not apply to crimes under Sierra Leonean law, because they cannot be regarded as international crimes. Consequently, it is hard to imagine that the court would find legal grounds to declare the amnesties not applicable to crimes committed under Sierra Leonean law.

A further argument against the application of the Lome Peace Agreement amnesties is that amnesties are only relevant to national court procedures. However, the legal problem remains whether or not the amnesties are valid in cases involving a mixed national-international court, such as the proposed Special Court for Sierra Leone.

The funding of the Special Court

One of the remaining questions is how to finance the new court. It is estimated that the costs for the court during its first year of operation will be about US\$ 22 million.

The Security Council insists that the Special Court should be funded by voluntary contributions. Consequently, it rejected the secretary-general's recommendation that the new court be financed

like the international criminal tribunals for the former Yugoslavia and Rwanda, which have been funded through mandatory fees levied on all UN member states.

Conclusion

At this early stage, it remains to be seen whether or not the UN's third ad hoc tribunal will be a success. It is clear that only a well financed and internationally supported court can promote the rule of law and deter further atrocities. The credibility of the court will depend heavily on the fair and equal treatment of all conflicting parties. Sierra Leone desperately needs to eliminate a culture of impunity, which has undermined all efforts to bring peace and reconciliation to the troubled country. In order to achieve this goal, the work of the Special Court is of utmost importance. 🗑️

Endnotes

1. Rita Silek is a legal officer at the International Law Department of the Ministry of Foreign Affairs in Hungary. Boris Kondoch is a research fellow with the Institute of Public Law at the Johann Wolfgang Goethe University/Frankfurt am Main, and is the managing editor of 'International Peacekeeping'. This article contains the views of the authors and does not reflect the position of the Ministry of Foreign Affairs in Hungary, or that of the Institute of Public Law at the Johann Wolfgang Goethe University.
2. Sierra Leone: Sowing Terror Atrocities against Civilians in Sierra Leone, Human Rights Watch, July 1998, Vol. 10, No. 3 (A), Sierra Leone: Getting Away with Murder, Mutilation and Rape, Human Rights Watch (A 1103), 6/99 July 1999.
3. Security Council Resolution 1315 of 14 August 2000, S/Res/1315 (2000).
4. Report of the secretary-general on the establishment of a Special Court for Sierra Leone (S/2000/915 of 4 October 2000).
5. Letter from the president of the Security Council addressed to the secretary-general (S/2000/1234 of 22 December), letter from the secretary-general addressed to the president of the Security Council (S/2001/40 of 12 January 2001).
6. Article 2 - Crimes against humanity
The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation;
 - (e) Imprisonment;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution and forced pregnancy, as well as any other form of sexual violence;
 - (h) Persecution based on political, racial, ethnic or religious grounds;
 - (i) Other inhumane acts.
7. Article 3 - Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II
The Special Court shall have the power to prosecute persons who committed (or who authorised the commitment of) serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:

- (a) Violence to the life, health, physical or mental well-being of persons, in particular murder, as well as cruel treatment, such as torture, mutilation or any other form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution or any other form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples;
- (h) Threats to commit any of the foregoing acts.

8 Article 4

Other serious violations of international humanitarian law

The Special Court shall have the power to prosecute persons who have committed the following serious violations of international humanitarian law:

- (a) Intentionally directing attacks against the civilian population, or against individual civilians not taking direct part in hostilities;
- (b) Intentionally directing attacks at humanitarian personnel, installations, materials, units or vehicles, or peacekeeping missions, in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (c) Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities.

9 Article 1

Competence of the Special Court

- (a) The Special Court shall, except as provided in subparagraph (b), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law (and Sierra Leonean law) committed within the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, threatened the establishment and implementation of the peace process in Sierra Leone.
- (b) Any transgressions by peacekeepers and related personnel present in Sierra Leone pursuant to the Status of Mission Agreement in force between the United Nations and the Government of Sierra Leone, or agreements between Sierra Leone and other governments or regional organisations, or, in the absence of such agreement, provided that the peacekeeping operations were undertaken with the consent of the Sierra Leone government, shall be within the primary jurisdiction of the sending state.
- (c) In the event that the sending state is unwilling or unable to genuinely carry out an investigation or prosecution, the court may, if authorised by the Security Council on the proposal of any state, exercise jurisdiction over such persons.

10 Article 7

Jurisdiction over persons of 15 years of age

The Special Court shall have no jurisdiction over any person who was under the age of 15, at the time of the alleged commission of the crime. Should any person come before the court who was, at the time of the alleged commission of the crime, between 15 and 18 years of age, shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child.

11 For example, Article 6 (5) of Additional Protocol II to the Geneva Convention stipulates: 'At the end of hostilities, the authorities shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained'

12 For more detail, see Kai Ambos, *Judicial Accountability of Perpetrators of Human Rights and the Role of Victims*, International Peacekeeping (Kluwer Law International), Vol. 6 Nos. 2-3, 2000, p. 67.

13 Avril J.M. McDonald, *Sierra Leone's Uneasy Peace: The Amnesties Granted in the Lome Peace Agreement and the United Nations, Humanitäres Völkerrecht-Informationsschriften*, 2000 No. 1, p. 18.

Interview with Ebrahim Ebrahim,
Chair of the Foreign Affairs Portfolio
Committee, South African Parliament



INTERVIEW WITH EBRAHIM EBRAHIM

Conflict Trends: What is the role of the foreign affairs portfolio committee in terms of shaping South African foreign policy?

Ebrahim Ebrahim: The mandate of the Foreign Affairs Portfolio Committee, like all other portfolio committees in parliament, is to perform an oversight function. The committee frequently requests briefings on bilateral and multilateral issues - as well as all other aspects of South Africa's foreign policy - from the minister and Department of Foreign Affairs. The committee is tasked with examining the functioning of the department, and also monitors its transformation. The committee scrutinises the foreign affairs budget and recommends its adoption to parliament. Members engage in wide-ranging discussions with foreign parliamentarians, and also attend international conferences.

Conflict Trends: Does your committee have an 'Africa strategy' for 2001 that will address the key challenges and opportunities being faced by parliamentarians on the continent?

Ebrahim Ebrahim: The main thrust of our 2001 Africa strategy is to actively support the president's Africa Renewal Plan by engaging African parliamentarians in key issues relating to the African renaissance. Our interventions will form part of wider initiatives aimed at promoting the peaceful resolution of conflicts, the holding of free and fair elections, and the observance of human rights and the rule of law.

Conflict Trends: What can South African parliamentarians do to encourage the peaceful resolution of disputes in war-torn African nations?

Ebrahim Ebrahim: The committee will organise regular briefings about conflict-affected areas on

the continent, and will initiate resolutions to condemn acts of aggression and support peace initiatives. Our members will establish contact with parliamentarians, government officials and organs of civil society within war zones, and will assist, wherever possible, in furthering associated peace processes. For example, in the case of Western Sahara, we would like to interact with stakeholders from both Morocco and the Saharawi Peoples' Republic, to find creative ways of overcoming the obstacles which have prevented a referendum from being held.

Conflict Trends: As a member of the South African delegation that observed the elections in Zimbabwe last year, you witnessed, first-hand, the internal dynamics of that country. What will the focus need to be of the Zimbabwean government-policy, if civil unrest is to be averted?

Ebrahim Ebrahim: First and foremost, Zimbabwe's government will need to address the country's serious economic problems if social stability is to be ensured. This will mean finding a just solution to the land problem, which should result in landless citizens acquiring property. The British government must make sufficient funds available for the purchase of land, which it agreed to do under the terms of the Lancaster Treaty. Zimbabwe must also put an end to its costly involvement in the DRC war by pursuing a peaceful resolution to that conflict. South Africa has a role to play in assisting Zimbabwe in resolving its socio-economic and political problems, as a civil conflict in Zimbabwe will have a destabilising effect on the southern African region.

Conflict Trends: Are you optimistic that 2001

will see genuine progress in the DRC peace process, which will lead to a new democratic political dispensation?

Ebrahim Ebrahim: Recent developments in the DRC are cause for optimism. The new president, although not democratically elected, has taken positive steps to advance the peace process by committing himself to the implementation of the Lusaka Peace Agreement. His willingness to accept Sir Ketumile Masire as facilitator of the internal dialogue process, and his support of United Nations (UN) peace operations, are hopeful signs that the peace process can be re-energised. However, a genuine, long-lasting solution to the conflict will not be found until the war's political economy is addressed, and valuable resources, such as diamonds and gold, cease to provide the economic incentive for foreign and domestic parties to wage war. If the requisite political will to address this issue is mobilised within the international community over the next year, the prospects for nation-building within the DRC would be greatly enhanced.

Conflict Trends: Do you hold out much hope that the international community will live up to its promises of financing the internal dialogue, and of placing peacekeeping troops on the ground in the DRC?

Ebrahim Ebrahim: We hope that the international community will live up to its promises of financing the internal dialogue, and of deploying military troops. Recent pronouncements by Western powers indicate a lack of commitment to fully support the implementation of these aspects of the Lusaka Peace Agreement. It is important that the region does not rely too heavily on non-African powers to finance and sustain these peace initiatives. We have seen, from past experiences, that the resolution of African conflicts are not always a priority on the agendas of foreign governments. Consequently, it is up to us to collectively ensure that our own African peacekeeping troops make the disengagement plan within the DRC viable, and that discussions regarding a new constitution and electoral process for the DRC do take place.

Conflict Trends: Would you like to see South Africa play a larger role in the Sudan peace process?

Ebrahim Ebrahim: We acknowledge that the IGAD process has been continuing, with little success, for the last eight years, and that the process has been largely driven by Western powers within the IGAD Partners Forum. There needs to be an

'Africanisation' of this conflict management mechanism, as well as a concrete initiative to break the impasse that has caused the peace process to stagnate. In order to ensure fruitful discussions, all sides will need to come to the negotiating table with clear positions and a vision for the future. The people of southern Sudan have yet to clearly identify a common position to bring to the table. There may be a role here for South African civil society, involving the bringing together of a divided South, as well as the provision of a forum for them to hammer out their differences. The South African government is in contact with parties in the North and South, and is well placed to facilitate discussions between both sides. South Africa does, however, need to be sensitive to other regional efforts, such as the Libyan-Egyptian initiative and the IGAD process.

Conflict Trends: Do you think the establishment of the new African Union will play an effective role in conflict resolution throughout the continent?


Ebrahim Ebrahim: The new proposal to form an African Union, which will replace the OAU, should play a positive role in preventing conflict and in resolving ongoing violence. The proposed African parliament could be an important forum to discuss and settle disputes. The African Union would be entitled to take military action against any African nation, if supported by two thirds of its members. This is a deviation from the existing OAU policy, which does not allow for interference in the internal affairs of sovereign states. This may appear to violate the UN Charter, which allows only the UN Security Council to authorise intervention. However, recent experiences, such as the intervention in Kosovo, suggest that in certain instances, intervention can take place without UNSC sanction, particularly in cases where gross violations of human rights have occurred. This new flexibility in regional policy will enable timely and effective intervention in humanitarian emergencies, making a union of African states more meaningful.

Conflict Trends: Now that two of the champions of the campaign to curb the trade in conflict diamonds have changed portfolios (Robert Fowler and Peter Hain), what can South Africa do to maintain the momentum and ensure the effectiveness of sanctions?

Ebrahim Ebrahim: South Africa recognises that the international community has a moral obligation to ensure that an international certification scheme for diamonds is put in place as soon as possible, in order to prevent blood diamonds from reaching the cutting centres in Northern capitals. South Africa

has attempted to maintain the momentum of the Kimberley process to develop such a system, by chairing the meeting recently held in Namibia. South Africa will also chair the recently established task force of key producer and importer countries, which will be largely responsible for laying the groundwork for such a system. The South African government will continue to encourage concerned nations to speed up the process, to devise effective monitoring controls and to establish mechanisms to prevent the forgery of certificates. We acknowledge that conflicts, such as the one unfolding in the DRC, are fueled by diamond revenue, and without an international certification system for diamonds, the incentive to wage war will outweigh the incentive to make peace.

Conflict Trends: Having spent almost 20 years on Robben Island, having endured a kidnapping and torture by South African security forces, you have emerged from these experiences with an enormous propensity to forgive and make a significant contribution to nation-building in South Africa. What can you say to belligerents on the continent who are considering laying down arms and negotiating peace?

Ebrahim Ebrahim: Recent history indicates that in any armed struggle, you do not aim for complete military victory. At the end of the day, the armed struggle is meant to seek political accommodation for a just resolution to the conflict at hand. It is clear that in Africa there can be no military solutions to ongoing conflicts. We therefore advocate dialogue between the warring parties to seek a peaceful resolution to the conflict, which must be in the interest of the country's masses, and which must establish a system of government based on the will of the people. While war criminals must be punished, parties must seek to reconcile differences between them. If one fails to do this, then any peace will be a temporary one, which could lead to further conflict. 

Endnote

* Ebrahim Ebrahim is the Chair of the Foreign Affairs Portfolio Committee in South African Parliament. He is also a member of the Intelligence committee, and a senior member of the African National Congress, serving on the National Executive Committee. Ebrahim has travelled extensively overseas, representing South Africa at key negotiations, conferences and high level meetings. He has consistently pushed for a focus on African issues in South Africa Foreign Policy and encouraged concerted efforts towards conflict resolution of the continent.



ACCORD have trained over 16,000 people from numerous African countries over the past decade. This includes some 4,000 South African election monitors trained in 1994 and over 2000 Nigerian election monitors trained in 1999

Training

