CONFLICT TRENDS

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BY **VASU GOUNDEN**

Last year, the African Union (AU) celebrated the 50th anniversary of its founding as the Organisation of African Unity, at the 2013 AU Summit. Our continent's leaders took a crucial decision that Africa and her people must write their own narratives. True to form, the AU Commission Chairperson, Dr Nkosazana Dlamini-Zuma, has taken the lead and written an 'email from the future', highlighting her vision of a united, prosperous and peaceful continent in 2063. This vision, buttressed by continent-wide economic integration, large-scale infrastructure development and an 'African Renaissance' in areas of education, energy, health and trade, paints an optimistic and tangible expression of our continent's future.

The year 2013 was a benchmark for African countries to assess how far they have come since 1963 – and, more importantly, how much further they must go to reach their 2063 aspirations. The continent has continued to sustain growth rates upwards of 5%, despite the pressures of the global economic recession. Rising domestic investments, strong agricultural harvests and higher domestic earnings highlight the significant progress occurring in Africa. There is momentum for increased regional economic and infrastructure integration, led by the regional economic communities, along with more favourable global trade relations.

Most importantly, as AU Deputy Chairperson Erastus Mwencha recently noted, peace is becoming the norm on the continent: "90% of Africa's population lives in places which are peaceful. We do have 10% of the continent still facing challenges of peace and security, but that 10% cannot define the continent."[1] Peace and development remain two sides of the same coin; one cannot flourish without the other.

It is precisely because of the plight endured by this 10% that Africa must continue to secure peace throughout the continent. Although important gains have been solidified over the past decade, Africa still faces complex crises. Recent developments in the Central African Republic,

South Sudan and the African Sahel highlight the challenges of both making peace and reconstructing societies following conflicts. In our experiences, we have witnessed many African countries struggle for years, if not decades, to rebuild in the aftermath of conflict. Infrastructure must be repaired, economies must be revived, institutions must be reimagined and the social fabric of societies must be rewoven if these countries are to successfully alleviate the conditions that instigate such conflicts.

We must redouble our efforts to prevent the outbreak of violent, protracted conflicts and rebuild those societies that have endured their devastating impacts. Conflict prevention, operationalised through some combination of the AU's African Peace and Security Architecture with support and input from civil society, academia, business and community leaders, should seek not only to identify potential conflict hotspots but also bring different leaders to the table and promote the peaceful and constructive resolution of such disputes before further escalation occurs.
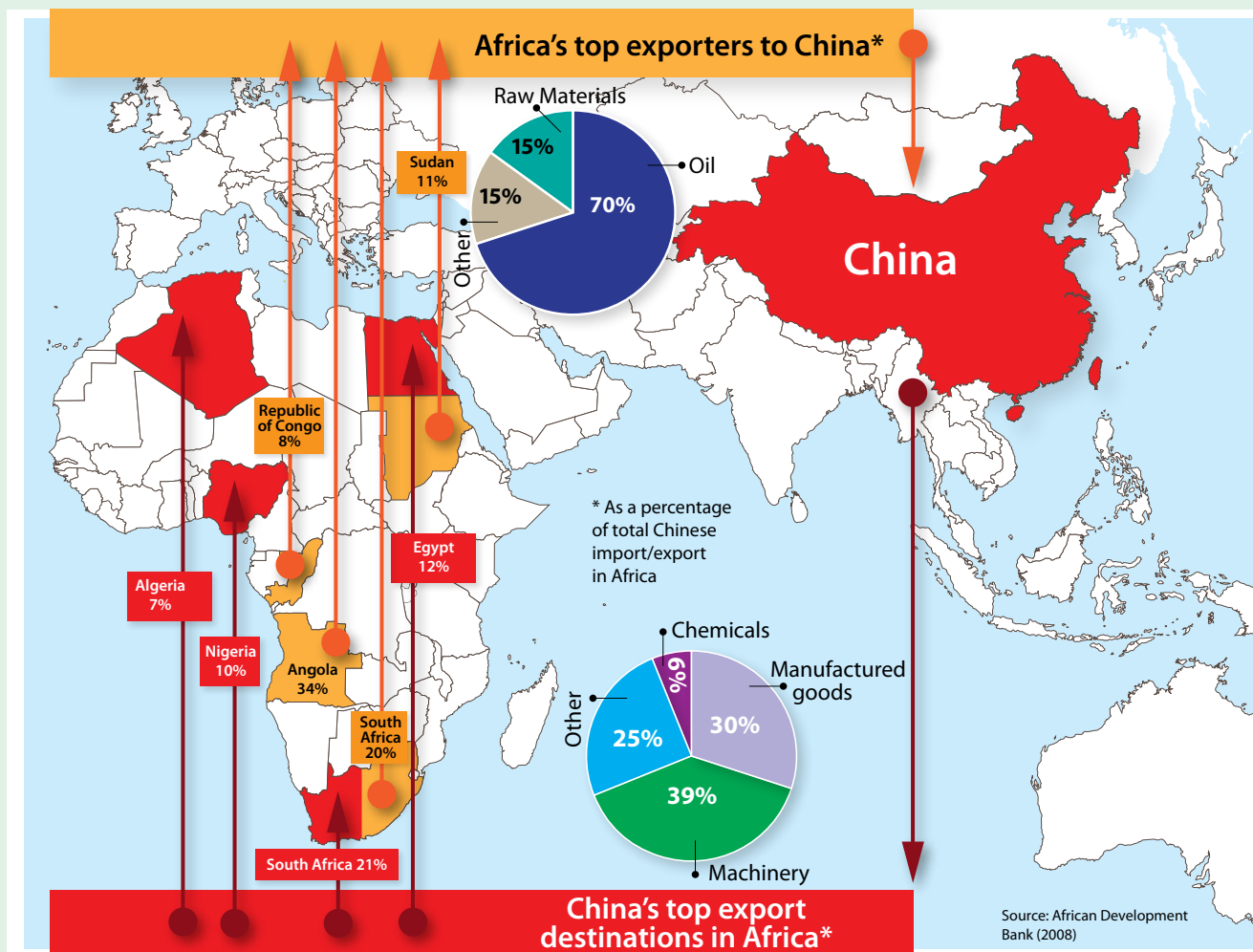
Africa is on the right track: we have come to realise the importance of writing our own narrative as we learn from our successes and failures in dealing with complex conflicts on the continent. While we are encouraged by the progress made thus far, we remain committed to developing innovative resolutions and interventions to address the many significant conflict challenges we still face. A prosperous and peaceful Africa in 2063 is attainable! ▲

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1   The East African (2014) 'Africa has done well for itself despite cases of war and famine'. Interview with Erastus Mwencha, Deputy Chairperson of the AU Commission. *The East African*, 8 February, Available at: <http://www.theeastafrican.co.ke/news/Africa-has-done-well-for-itself-despite-cases-of-war-and-famine/-/2558/2198056/-/5a8h0e/-/index.html>.

HAS THE RISE OF CHINA IN AFRICA MADE DEMOCRATISATION LESS LIKELY?

BY AKIN IWILADE

Africa's top exporters to China*

Raw Materials
15%
15%
Other
Oil
70%

Sudan
11%

Republic
of Congo
8%

Egypt
12%

Algeria
7%

Nigeria
10%

Angola
34%

South
Africa
20%

South Africa 21%

China

* As a percentage
of total Chinese
import/export
in Africa

Chemicals

Manufactured
goods
30%

9%

Other

25%

39%

Machinery

China's top export
destinations in Africa*

Source: African Development
Bank (2008)

Introduction

China is Africa's largest new investor, and the value of its two-way trade – at almost $200 billion in 2012 – is second only to that of the United States (US). It now has a strong and growing influence in core extractive industries from Angola to Zambia, and continues to make inroads in many other states.[1] As Chinese investment grows, however, so does concern about what implications this may have for Africa's political processes and for global strategic alignments. As Richard Joseph notes: "China's growing presence has been complicating prospects for further democratisation in Africa,"[2] because it often ignores governance and human rights problems and makes investments that strengthen autocratic regimes.[3] There is also concern among those who situate China's rise within the context of a 'new scramble for Africa' that is perceived as undermining its independence in ways even more sinister than what occurred in the past.[4] These concerns are valid if one considers evidence from countries like Sudan and Angola, where China is perceived to have protected authoritarian regimes and has,

Above: China is Africa's largest new investor. As Chinese investment grows so does concern about what implications this may have for Africa's political processes and for global strategic alignments.

A bridge built in 2011 by China Gezhouba Corporation in Mali's capital city, Bamako.

in the case of Sudan, been implicated in the provision of arms to governments that commit human rights abuses in protracted conflicts.

This article draws on Denis Tull's[5] insightful framework for thinking about Chinese activities in Africa to demonstrate the need for greater nuance in the way we assess China's impact on democracy. The article first critically engages with Tull's framework and highlights the various categories in which countries with high levels of Chinese engagement fall. These categories include states with major reserves of strategic resources – such as oil, copper, uranium and so on – on the one hand, and those without these resources, on the other. There is also a category of countries in which China has mainly a conflict resolution or political interest. It also draws attention to the need to deconstruct China itself, by challenging the myth of an all-powerful and omnipresent communist party structure. In this case, the article points out the growing role of private individuals and companies in foreign investments coming into African countries from China. The section that follows attempts to situate this analysis within Sudan and uses the Sudanese example not only to show the limits of China's impact on democracy, but also the extent to which it appears to be responding to international pressures and criticisms. The article concludes by pointing out that a more careful reading of China's African

diplomacy will encourage a cautiously optimistic take on how China may help shape democracy on the continent.

How (Not) to Think about China's African Engagement

The precise effects of Chinese engagement in Africa is "conditioned by the nature of China's interests, the modes of engagement with particular polities and the political systems operating in the country concerned".[6] Tull[7] provides a useful framework within which we can understand China's influence on political and governance processes in Africa, by identifying three categories in which China's activities can have specific impacts on democratisation. The first category are states currently undergoing democratic transitions, which lack strategic resources but which serve as useful markets and allies in geopolitical struggles. In these countries, China has not undermined democracy but rather has offered significant aid – supporting joint ventures, making technical grants and investing in infrastructure. Ghana, Tanzania and Zambia can be placed in this category. The second category are states such as Angola, Sudan and Nigeria, with significant strategic resources. Here, China's role often exacerbates the 'resource curse' and strengthens neopatrimonial structures. In this regard, China is hardly a democratic influence. The third category are states such as

Liberia that are emerging from conflict, where China makes important and helpful peacekeeping interventions.[8] As these interventions are within the framework of the United Nations (UN), China's actions contribute to the reintroduction and gradual consolidation of democracy.[9] Tull's categorisation is important because it disaggregates China's African engagements in a way that allows us to see how the specific conditions and nature of particular states can shape outcomes. It thus avoids the all-too-familiar simplistic accounts of China as entrenching undemocratic regimes.[10]

While Tull's categorisation privileges the conditions within the African states in which China operates, we can go even further to argue that the configuration of China's investment decisions and actions also leave little space for any generalisation about how it impacts on democratic processes. Accounts of China as simply being bad for democratisation in Africa, for instance, often do not take into account the wide variation in Chinese investment and influence across the continent. While China is no doubt a central international player in Angola and Sudan, for example, it is less so in many other African countries. In fact, as Cheeseman notes: "Between 2006 and 2008, 25 percent of two-way trade between China and Africa occurred with just one country – Angola. A further 18 percent was accounted for by South Africa."[11] This implies that Chinese investment

is concentrated in relatively few countries and should thus not be construed as a continent-wide 'scramble'. It is important to note, however, that in small economies such as Zambia, even small Chinese investments can significantly alter economic patterns, shape labour mobility and relations and underpin economic recovery. In contexts like these, a relatively small investment can buy China huge influence. The perception of China as an influential anti-democratic force also assumes homogeneity to Chinese investment decision-making and planning that is largely a myth. Even though Chinese investments are no doubt headlined by large state-backed corporations, the growing role of private investors and entrepreneurs who often have direct contact with local African people but do not necessarily take orders from Beijing is often ignored.[12] As Alden, Large and Soares de Oliveira note: "The major state backed Chinese investors do not appear to have substantially integrated into African business communities yet, in contrast to entrepreneurial networks such as those in Mauritius with more embedded positions."[13] Taylor makes a similar point, that "some China specialists will seem somewhat surprised to discover that [China] is not a monolithic political structure with all power emanating from Beijing".[14] While this does not necessarily challenge the perception of China as an undemocratic influence, it does strengthen the argument

Chinese vendors wait for customers at a local market in Omdurman, Libya.

South Sudan's and China's national flags in front of the Great Hall of the People at Tiananmen Square in Beijing, China (23 April 2012).

that Chinese influence can only be understood accurately if it is unpacked and analysed within specific contexts. The lesson to be drawn from this is that China's ability to influence political processes varies significantly across the continent, with different countries offering different contexts and thus different ways of understanding China's role. Any complete analysis of China's impact on democratisation in Africa would therefore be nuanced, and thus avoid broad generalisations that often merely reproduce Western fears about Chinese global geostrategic competition, rather than the realities of China's engagement with the continent.[15]

China, Democracy and Human Rights in Africa: The Case of Sudan

As important as the above discussion is for how we can think about Chinese impact on democratisation in Africa, perhaps the most significant indicator of whether China will, in the long run, make it less likely for Africa to democratise is to be found in the way Chinese authorities have responded to international criticism of its role in African states. Sudan, the most obvious example of China's support for authoritarian forces, shows that it is important to take note of significant changes in Chinese African policy and to acknowledge the role that the growing complexity in China-Africa relations has played in forcing China gradually to reconfigure its

much-criticised 'non-intervention' policy. In short, China is extracting important lessons from its increasingly complex relationship with Africa and appears to be taking steps – albeit tentative and sometimes even cynical – towards being a net promoter rather than an enemy of Africa's beleaguered democracy.

It should be noted that Chinese influence in Sudan has a longer history than its more recent salience in the Sudanese economy suggests. China was a staunch "supporter of Khartoum during the first post-independence civil war that ended in 1972, the civil wars in Southern Sudan after 1983 and conflict in Darfur since 2003".[16] The emergence of the National Islamic Front (NIF) through a military coup in 1989, and the growing international isolation of the country over allegations of promoting terrorism, deepened Sino-Sudanese security cooperation and eventually created the conditions for its now-significant economic ties. By 1997, the Sudanese oil industry had become the most important area of cooperation between both states, underpinning Chinese diplomatic protection and arms transfers. As the humanitarian crisis unfolded in Darfur, however, China faced growing international condemnation for its continued support for Sudanese president Omar al-Bashir's government and for ignoring mounting evidence that the Sudanese government may be committing crimes against

humanity. China countered this by arguing that international cooperation and peace can only be guaranteed by the principles of non-interference, mutual respect and mutual benefit. This logic was both self-serving for China and beneficial to Bashir's regime. In the case of China, it obviously yielded dividends in increased investments and access to the oil fields in Sudan to feed its voracious industrial expansion. It also allowed China to pursue its policy of limiting Western influence wherever it can, and promoting a multipolar vision of global politics that recognised China's own claim as a key pole. For the Bashir regime, it provided unprecedented revenue that largely insulated it from Western pressure and encouraged it to continue its defiance of global opinion. Even though the NIF regime never had any credible democratic credentials, it is easy to discern how the patterns

CHINESE SUPPORT WAS CONDEMNED BY WESTERN GOVERNMENTS AND, BY 2003, THIS STARTED TO SHOW SIGNS OF STRAINING CHINA'S RELATIONSHIP WITH THE REST OF AFRICA

of uncritical Chinese investments and diplomatic protection may have further deepened its resolve and capability to resist international pressure for democratisation and for preventing human rights abuses in the country. Chinese support was condemned by Western governments and, by 2003, this started to show signs of straining China's relationship with the rest of Africa.

To put China's support for Bashir's authoritarian apparatus in perspective, one may look to data on Chinese arms sales and transfers to Africa. According to the 2007 Small Arms Survey, between 2002 and 2005, China was the largest supplier of military weapons and small arms to Sudan. In fact, by the 1990s, China had helped Sudan develop a domestic arms industry that has no doubt fuelled violence all over the region. Second to the US, China is the largest supplier of arms to Africa. In fact, a good percentage of its military exports are small arms, which are now infamous instruments for state repression and brutality.

China's refusal in the early 2000s to pressure Sudan to pursue peace in Darfur, southern Sudan, Kordofan and its other conflict zones was very much connected to the securitisation of its oil investments in the country. Bashir's government relied on the extensive militarisation

At a Reuters interview on 10 February 2014, Zhong Jianhua, China's special representative on African Affairs, indicated that China's efforts to help resolve conflict in South Sudan marks a "new chapter" in Beijing's foreign policy that will seek to engage more in Africa's security.

China's Foreign Minister, Wang Yi, addresses a news conference during his official visit to Ethiopia in January 2014. China, the biggest investor in South Sudan's oil industry, called for an immediate ceasefire in the world's newest state as peace talks to end a three-week outburst of ethnic fighting faced delay (6 January 2014).

of oil-producing areas to guarantee unfettered extraction. This was backed by deliberate policies of depopulating these regions and dispossessing peasants of land – which, in turn, led to conflict and suffering. It is difficult to see how these domestic policies could have been acceptable in a democratic state. China, thus, had a vested interest in perpetuating the hold of Sudan's governing elite on power, thereby justifying Tull's categorisation of resource-rich states as an arena where China is often an undemocratic force.

THESE EMERGING CHALLENGES HAD PROFOUND POLITICAL IMPLICATIONS FOR CHINA, AND COULD NO LONGER ADEQUATELY BE TACKLED BY THE DOCTRINE OF 'NON-INTERFERENCE'

To underscore an earlier point about the need for nuance and context specificity in understanding the implications of Chinese activities on democratisation in Africa, however, it is important to note that there are signs that China's Sudanese policy has evolved significantly in the last five years. In the first place, by 2003, tensions had begun to appear between

China's 'non-interference' policy and the growing complexity of its relations with Sudan. While China was often at pains to explain its relations with Sudan as plainly business and therefore without political responsibility, it gradually became clear, even to the Chinese, that the so-called 'business' relations with Sudan had profound political implications. As Large puts it: "The relatively recent achievement of a functioning oil sector in Sudan has had – and will continue to have – a considerable political impact by enabling historically unprecedented resources to accrue to the central state."[17] For China itself, its focus appears to have shifted from investment expansion to the protection of its now-expansive oil investments in the country, and to navigating the volatile climate occasioned by both growing internal Sudanese apprehension over Chinese companies' impact on domestic industry and the increasing competition from other emerging powers such as India, Malaysia and Indonesia. It also had to respond to growing international condemnation of its pro-authoritarian policies at a time when it was preparing to host the world at the 2008 Beijing Olympics. These emerging challenges had profound political implications for China, and could no longer adequately be tackled by the doctrine of 'non-interference'.

By 2004, China had become visibly more active in encouraging the Bashir regime to consider peaceful

solutions to its many insurgencies. Subtle Chinese pressure is partly responsible for bringing Bashir to the table and to the eventual Comprehensive Peace Agreement (CPA) with the Sudanese People's Liberation Movement (SPLM). This agreement culminated in the independence of South Sudan in 2011. Chinese interests in stability in the region were also increased when it won a diplomatic victory over Taiwan, when Chad decided to switch loyalties in 2006. Sharing a long porous border with Sudan, and China no longer having the incentive to aid Chadian rebels, Chad became another important feature of China's African policy and helped incentivise Beijing to promote peace and stability.

What the above analysis shows is that there needs to be greater nuance in the way China's impact on democracy across the continent is assessed. For instance, even in specific resource-rich contexts – which are expected to predispose China to undermining democratisation – there is evidence and are signs of China's sensitivity to global opinion and changing the way it engages with governance and politics in Africa. This therefore justifies cautious optimism about the long-term implications of Chinese activities on democratisation in Africa.

Of course, it may be argued that simply by providing African states with new investment options and thus undermining the leverage Western donors have to demand democratic reforms, China creates a new incentive for Africa's notoriously undemocratic governing elite to postpone or even truncate reforms. This argument is, however, not enough to dismiss China as an undemocratic influence in Africa. As the Sudanese example shows, China is capable of responding to international opinion and modifying its behaviour as appropriate. Even though it will be farfetched to expect that China will, in the near future, advance neoliberal political reforms in the way the West does (China itself being a one-party state), it can and does play constructive roles in encouraging stability and governance reforms – even if these are heavily influenced by its own interests. This self-serving approach to reform is, however, not unique to China, as the West's relations with President Yoweri Museveni's Uganda clearly shows. What is thus critical to assessing China's 'democratic credentials' in Africa is to avoid simplistic generalisations and to acknowledge the dynamism of China's Africa policy – underpinned, as it were, by the Chinese vision of its interests in a globalised world.
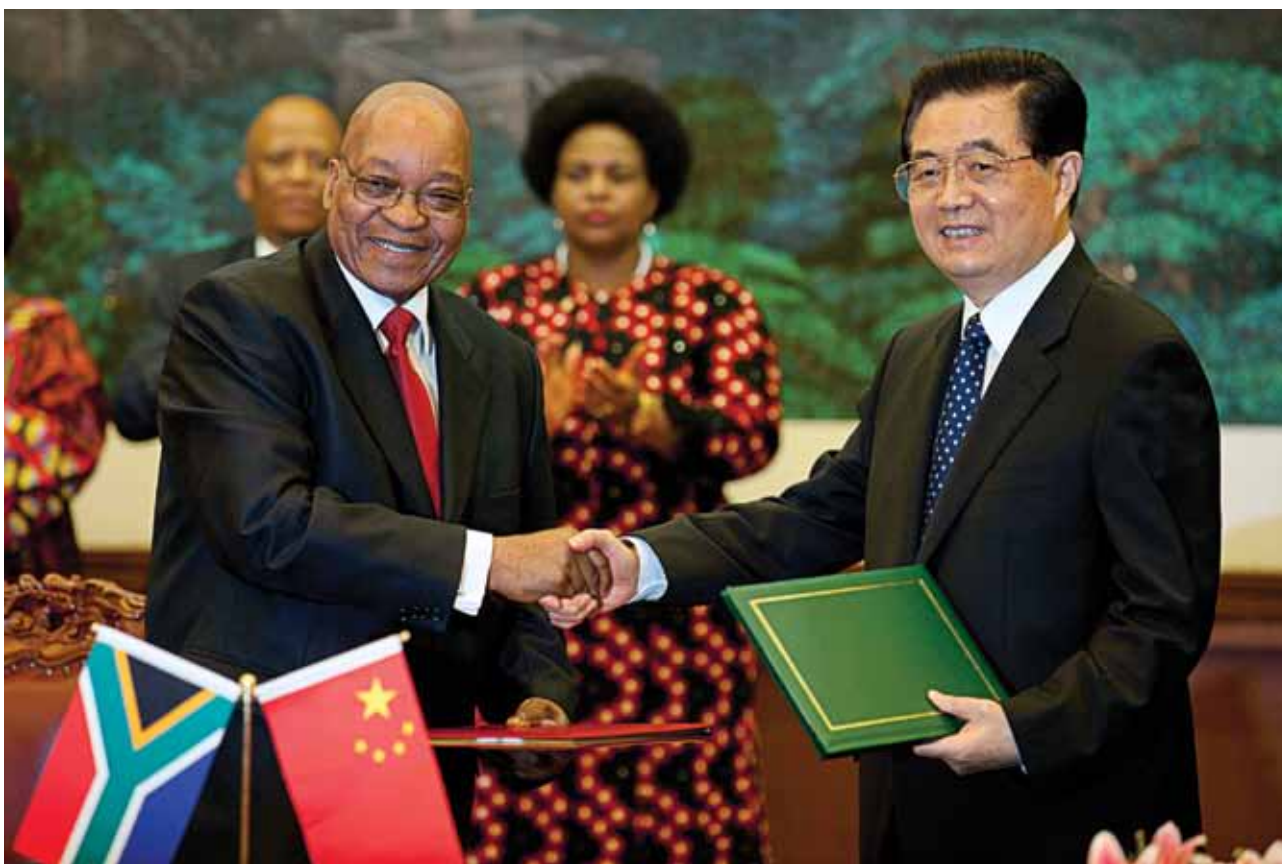
South African President Jacob Zuma shakes hands with Chinese President Hu Jintao in Beijing, China. Zuma called for greater investment in his country from China, as Pretoria seeks to narrow its trade deficit with Beijing and bring growth to its economy (24 August 2010).

Conclusion

This article argues that Chinese impact on democratisation in Africa is highly varied and context-specific. Using Tull's categorisation, the specific internal conditions of African states predispose them to certain influences from China. Where the state is transitioning to democracy and enjoying relative stability, China often supports rather than disrupts democratic progress. States such as Ghana, Zambia and Tanzania fall into this category. Where the state possesses strategic resources, China often exacerbates the 'resource curse' and strengthens neopatrimonial structures and corruption. In these type of cases, China is usually a problem for democratisation. States such as Angola, Nigeria and Sudan are good examples here. Where states are in post-conflict stages – for instance, Liberia – China usually plays useful roles within multilateral peacekeeping frameworks. In this sense, it impacts positively on democratisation, as it helps to consolidate peace and support electoral and other such institutional structures. Tull's categorisation is further underpinned by China's own internal dynamics and the way it conceptualises its interests. China's investments and impacts are far more concentrated in a few countries in Africa than the discourse about a 'new Sinophere' suggests.[18] Even where China has significant presence, the actors should be disaggregated to account for the growing relevance of private Chinese investors and embedded social networks, which operate outside the control of Beijing. These growing networks, if understood, could have significant implications for how we think about China's ability to direct its relations with African states centrally. While Tull's categorisation is useful, in light of the more recent evolution of Chinese African policy, understanding its implications for democracy will require taking account of how China responds to feedback from the international community and what this may tell us about how it will interact with democratisation on the continent in the near future. The most obvious example of China's anti-democratic impact on an African state is Sudan, which shows how China's problematic 'non-intervention' policy has gradually become muted. With the expansion of its economic engagements with Sudan, the profound political implications of Sino-Sudanese relations have become more obvious, and China has responded accordingly to this new complexity.

As a state now driven by pragmatic rather than ideological considerations, China can be expected increasingly to support measures that will guarantee its investments, promote stability and enhance its global standing. If, in doing this, it continues to respond to international pressures about its relations with African governments, one may be cautiously optimistic about the net prospects of China as a player in African democratisation. This optimism is, as Tull's categories will suggest, of course to be qualified by the specific context of each state within which China plays a role. ◭

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PREVENTING VIOLENT CONFLICT IN SOMALIA: TRADITIONAL AND CONSTITUTIONAL OPPORTUNITIES[1]

BY **RACHEL MORROW**

Introduction

Somalia is beginning to lift itself from the ashes and debris of war, and attempting once again the project of statebuilding and peacemaking to bring stability to a society devoid of it for so long. In September 2012, 135 traditional elders from different clans and groups elected a new president, Hassan Sheikh Mohamud, prime minister, Abdi Farah Shirdon, and 275 members of Parliament by secret ballot.[2] A six-pillar plan was formulated by government to guide the state's development process. The constitution is in its final stages of development. Foreign relations have been re-established and investments have increased marginally.

Yet, despite these positive developments, peacemaking processes need to be institutionalised to ensure that future disputes do not escalate into violent, widespread conflict. Disputes and non-violent conflict are inevitable in any state's existence. However, when those differences are not fully addressed, the conflict can become violent, as in the case of Somalia. Furthermore, the highly developed infrastructure

Above: 135 traditional elders from different Somali clans and groups elected President Hassan Sheikh Mohamud in September 2012.

Xeer exists to prevent conflict from escalating into violence between clans or subclans. An issue will arise – for example, an accusation is made that a man was killed by someone from a different clan, or conflict may arise over land or fresh water sources – and to prevent violent retaliation, a council of the elders is called. It is incumbent upon the aggrieved clan to investigate the case and determine the harm committed before presenting the case.[5] When the council of elders or *shir* of more than one clan meet, it is known as *guurti*. Sometimes a third party *shir* from an uninvolved clan is brought in to mediate and discuss a conflict to prevent bias.[6]

WOMEN, CHILDREN AND "HOT-BLOODED WARRIORS" OR THE YOUNGER MEN ARE EXCLUDED

A clan's *shir* can also be used to resolve disputes within its clan, and thereby prevent intra-clan violence. A *shir* is therefore an assembly of the mature men of a community. Women, children and "hot-blooded warriors" or the younger men are excluded.[7] Although 'assembly' may be a recognisable term, it does not have much in common with the Western concept of meetings, which involve preset agendas and time limits. The elders spend much time drinking chai, chewing *qat*[8] and talking.[9] Slowly, the reason for attendance will come into focus: groups will break off and debate topics, poems and speeches will be impassionedly made, small

of war in Somalia means that those not satisfied have the means to respond violently. This article assesses the opportunities for preventive mechanisms that exist within traditional customary law, known as *xeer*, as well as in the most recent draft of the constitution, with a particular look at factors that could prevent disputes from escalating into violence. What will become clear through the analysis is that both *xeer* and the constitution offer opportunities for preventing such conflict. These opportunities should be used to their fullest potential and be institutionalised, to promote complementarity between *xeer* and the constitution and, ultimately, enhance the likelihood of peace.

Xeer: A Description

Xeer is a set of rules and obligations developed over time by traditional elders to mediate peaceful relations between Somalia's competitive clans and subclans.[3] The universality of *xeer* is questioned in the sense that depending on the regions, clans and conflicts involved, implementation of *xeer* can vary. However, the fundamental and most significant aspects of *xeer* are common throughout Somalia. The core principles of *xeer* are called *xissi adkaaday,* and include the collective payment of *diya* (or blood compensation), traditional clan assemblies or *shir,* and the role of the clan elders as key conflict resolution players.[4] It is these three aspects of *xeer*, in particular, and the manner in which they interact, that are important for peacemaking opportunities.

GALLO IMAGES/AFP

Xeer is a set of rules and obligations developed over time by traditional elders to mediate peaceful relations between Somalia's competitive clans and subclans.

New members of parliament, selected by traditional elders, are sworn-in during an inauguration ceremony of Somalia's first parliament in 20 years in Mogadishu (20 August 2012).

fights might break out, but slowly a decision will be reached, and will be communicated to the broader community.[10] *Shir* often looks more like a social gathering than a formal political conference. However, during the review of the facts of the case, there are aspects that would not be misplaced in a Western courtroom – for example, pleas of innocence and guilt, evidence, witnesses and cross-examination.[11]

Xeer cases can also take two different forms, which will affect the outcome of the case: mediation (*masalaxo*) or arbitration (*gar dawe*). With *masalaxo*, the outcome aims to satisfy both parties. While this is certainly more preferable for the accused, it can also be advantageous to the aggrieved, because it means the accused will not appeal the decision or in some way retaliate violently, and the outcome will be rapidly implemented.[12] It is also useful for cases where there is a dispute over land or resources, for example, but no crime has been committed by either party. *Gar dawe* is based on the winner-takes-all principle, and this is used for the most heinous crimes. For example, a murder conviction will bring a *diya* punishment or blood compensation, which means that the convicted person's *diya* paying group will need to pay a certain number of camels to the *diya* group of the murdered. For the murder of a woman, the convicted person's *diya* group will be responsible to pay the murdered

person's *diya* group 50 camels, and for a male it will pay 100 camels.[13] The clear gender disparity is addressed later in the article. A *diya*-paying group can number hundreds or even thousands of family members, who are bound either to pay or receive blood compensation for a crime committed or suffered by one of their members.[14] In this way, the situation is resolved, and retributive violence driven by revenge is prevented.

Xeer: Opportunities

Xeer continues to offer Somalia opportunities to prevent violent conflict. It was the mechanism used to prevent conflict in precolonial Somali civilisation and, as such, it should not be dismissed. More than two decades of conflict in the region have seen the territory being controlled by different clans and alliances of people, and deciding who should legitimately own or control the land causes conflict, particularly in those areas that have airports, harbours and other valuable assets.[15] In rural areas, where land is the source of conflict and where *xeer* and clan elders are still held in high esteem, it could be a powerful tool that government should institutionalise to prevent the escalation of disputes into violence when deciding who legitimately owns land and resources.[16] This argument is premised on the fact that *xeer*

A *shir* is an assembly of the mature men of a community.

is currently being used in many areas in Somalia, and is seen as legitimate in those areas. Therefore, state decisions made over land and resource distribution should incorporate the process and precedence of *xeer*, because it is important that the decision made by the state is seen as legitimate, even if not beneficial, by both parties. *Xeer* can offer this legitimacy. In areas where *xeer* is the legitimate form of governance and justice, it is unlikely that an outcome by any other means will be accepted, and this could be the very situation that could escalate into violent conflict.[17]

It would also be valuable to institutionalise the systems of *shir* and *guurti* within the functioning of the modern state system. One of the main goals of the United Nations Assistance Mission in Somalia (Resolution 2102) is to assist Somalia in developing a federal state system.[18] Jubaland presents a current example, where the statebuilding process of creating federal member states has caused conflict. On 28 February 2013, a conference was held in Kismayo, the capital of Jubaland, to elect its new president.[19] However, the government did not approve of or attend the conference, and hours after the conference had selected Ahmed Madobe as president, a rival warlord, Barre Hirale – who is widely perceived to be backed by Mogadishu – declared himself as president.[20] This has led to violence in Kismayo as the two

proclaimed presidents battle to consolidate power, and this is worsened by the presence of terrorist movements such as Al Shabaab. The federal government is concerned that Jubaland might develop secessionist appeals, which it has been known to advance in the past. The federal government in Mogadishu is alleged to be in support of Hirale, and therefore perceived to be fuelling the conflict in Kismayo.[21] Whether these perceptions are legitimate or not, they could certainly damage the relationship between Jubaland and the federal government.

IT WOULD ALSO BE VALUABLE TO INSTITUTIONALISE THE SYSTEMS OF *SHIR* AND *GUURTI* WITHIN THE FUNCTIONING OF THE MODERN STATE SYSTEM

What this conflict example indicates is that mediation will be required between the federal states of Somalia and the government under the federal state system. Mediation efforts similar to those used in the *shir* process should be institutionalised within the federal state system that the

United Nations is assisting Somalia to develop. Each state could have a *shir,* comprising of the state's clan elders, which represents it in interstate mediation. This proposal is therefore about taking the localised mediation structure used for centuries in Somalia to mediate conflict between tribes, and institutionalising it within the federal state system to mediate conflict between states, and between states and the central government. In many respects, one could see the African Union's (AU) Panel of the Wise as a similar arrangement: it is structured on the African model of wise and experienced elders mediating conflict, but it has been institutionalised at a high political level in the AU. The suggestion is to do the same: to institutionalise the *shir* within the state structure to simultaneously institutionalise mediation within the state structure. This would be important to deal with conflicts such as that occurring in Jubaland.

Each region or state and the federal government should have an official *shir*: an assembly of elders to act on behalf of the body or region it represents when conflict arises, to prevent that conflict from becoming violent. Should there be a disagreement between two regions or between a region and the government, the *shir* from each would meet and attempt to resolve the issue. The actual functioning of the *guurti* should probably be a mixture of traditional and more Western conflict resolution meetings. The inclusivity of the broader male community in the meetings, together with the traditional involvement of the elders, would be valuable to maintain. However, the inclusion of women in this process is vital, and the *shir* could consist of not only clan elders but also of formally educated Somalis including businessmen, women, legal professionals and religious leaders.

Somaliland has long claimed to be independent of Somalia and, in the process of establishing a government, has institutionalised the *shir/guurti* system within its political structure, although in a slightly different way to what has been suggested above. Somaliland's Parliament is constructed of a lower house that is directly elected and an upper house, called the *guurti*, which is elected by communities.[22] Because the focus of this paper is on preventing violent conflict, the *guurti* envisioned is one with the purpose of mediation (not law-making, as in Somaliland's case). However, both ideas seek to institutionalise *xeer* and its mechanisms to create culturally relevant political structures.

Xeer: Limitations

As described above, the optimal functioning of *xeer* consists of an issue being brought forward, the clans' elders discuss it and mediate the issue, they come to a conclusion that is broadly accepted by the clans, and the problem is

When the council of elders or *shir* of more than one clan meet, it is known as *guurti*.

thus resolved. Unfortunately, spoilers can limit the success of this process. In situations where one clan is (militarily) more powerful than another, a decision that does not suit the more powerful clan can lead to violent retaliation, because victory is assured. It is perhaps useful to draw attention to Bekoe's mutual vulnerability argument here, which purports that for peace agreements to be successfully implemented without coercion, both signatories must exist in a mutually vulnerable political or military state.[23] In cases where *xeer* is implemented without this mutual vulnerability, it may not be successful. An example in Somalia is that of the armed occupation of the Rahanweyn lands by the raiding pastoral subclans of the Hawiye and Darood – who acted independently or as a militia of a subclan. They continued to cause violent conflict that *xeer* did not resolve.[24]

Xeer should be used in two ways: first, to resolve conflicts over land and resources in the early stages of statebuilding; and second, to be institutionalised in the federal state system so that conflict between federal states and between those states and the central government can be mediated and resolved. To deal with military inequality between clans when resolving land and resource conflict, this article suggests that the decision made by the *guurti* regarding the legitimate ownership of an asset should be enforceable by the state military. This is not to suggest that the Somali military (and the AU Mission to Somalia – AMISOM) has the capacity to fight every battle with every clan or warlord that is displeased with the outcome. It does, however, tilt the balance of power in favour of the successor, or at least makes both parties mutually vulnerable, and thereby mitigates this weakness. For Somalia to move forward with the statebuilding process, the land and resource claims must be dealt with and finalised. This is inherently a conflict-creating process, because it creates winners and losers. However, the mediation process within *xeer* offers an opportunity to make these decisions in the most culturally relevant and legitimate manner. The hope, therefore, is that the legitimacy of the decisions will also mitigate the potential for conflict in this process. Essentially, regardless of how these decisions are made, there is the possibility that the militarily stronger group will reject the unfavourable outcome, and take up arms as a result. The legitimacy and cultural relevance of *xeer* helps to mitigate this risk.

FOR SOMALIA TO MOVE FORWARD WITH THE STATEBUILDING PROCESS, THE LAND AND RESOURCE CLAIMS MUST BE DEALT WITH AND FINALISED

The same arguments can be made for the second suggestion, regarding the institutionalisation of the *shir* within the federal state system. However, one important addition must be mentioned: in the long run, individual

states will not have military power that could be used to oppose federal government decisions. Currently, the most important players in Somalia that control regions which could crystallise into states have some form of de facto military power. In the long term, this will not be the case: a functional federal state will exist with a state monopoly on legitimate force. When this is the case, the limitation of militarily unbalanced parties in a mediation will no longer be relevant.

ANOTHER MAJOR CONCERN WITH *XEER* IS THE COMPLETE EXCLUSION OF ALL WOMEN, REGARDLESS OF AGE

Another contentious aspect of *xeer*, and particularly *diya* payments, is that of collective responsibility. In 1968, a National Advisory Council was formed to determine how *xeer* could be formalised and codified within the state legal system, and collective responsibility was one of the main aspects where abolition was recommended.[25] Another major concern with *xeer* is the complete exclusion of all women, regardless of age. Women play no role in making decisions that keenly affect their own lives, and do not enjoy the same political rights as men. Widows are often forced to marry a male relative of her deceased husband (*dumal*), or are forced to marry the husbands of their sisters who have passed away (*higsian*), or are married into aggrieved clans as part of a *diya* payment (*godobtir*).[26] Women are unable to inherit capital possessions such as camels, plots of frankincense and so on. Domestic abuse against women is often ignored until it becomes so persistent that it is socially disruptive.

The use and legitimacy of *xeer* faces challenges in other areas, too. For example, during colonial times, elders were bought off by the administration to gain de facto control over certain clans. This weakened the legitimacy of the leaders, and created the need for clan elders to receive a fixed income so that they are less susceptible to bribery and corruption.[27] *Xeer* has also arguably failed to keep up with social change in Somalia, particularly in urban areas where interclan living has meant that no clear bilateral *xeer* exists between opposing groups. On the other hand, *xeer* is often dismissed, either because war in Somalia has disintegrated the social fabric or because Somalis have spent time abroad and no longer view *xeer* as legitimate. In rural areas, however, and in certain urban areas, *xeer* continues to hold strong legitimacy and relevance.

Constitutional Opportunities

It is important to acknowledge that the constitution used for this analysis is the provisional constitution, which was adopted in August 2012. At the time of writing, this was the latest version of the constitution available; however, it will not be the final one, as it is currently undergoing parliamentary review. The aspects under scrutiny in

Somali delegates hold up the provisional constitution during the National Constituent Assembly meeting in Mogadishu (25 July 2012).

this article (those that enhance and create peacemaking opportunities) are not among the contentious issues that are currently the focus of the parliamentary review. These contentious issues centre on the extent to which shari'a law[28] should be integrated into the constitution.[29]

THIS WOULD BE A VALUABLE PEACE INFRASTRUCTURE THAT IS RECOGNISABLE AND LEGITIMATE TO MANY SOMALI PEOPLE

The constitution creates a policy framework within which all future policies will be created. Article 50 discusses the principles of federalism in the Federal Republic of Somalia and, in particular, subsection (g) notes that one of those principles is the "resolution of disputes through dialogue and reconciliation".[30] Article 111F goes into more detail regarding how this would be achieved in practice: an Interstate Commission will be established and will have the powers "as the federal government deems necessary" to, among other things, "resolve any administrative, political or jurisdictional disputes between the federal government

and one or more governments of the federal member States or between the governments of Federal Member States" [Article 111F (2) (b)]. This institutionalisation of the mediation process in the constitution is an important step in creating opportunities to prevent violent conflict, either between federal member states or between a member state and the federal government. Although it is not clear how this commission will take shape, it would be ideal if it incorporated traditional methods and structures of conflict resolution, such as the *shir,* with the inclusion of clan elders. This would be a valuable peace infrastructure that is recognisable and legitimate to many Somali people.

Article 51 outlines the collaborative relationships between the various levels of government in the Federal Republic of Somalia. There are two sections in Article 51 that speak specifically to the need to apprehend and cater for conflict. Subsection (3) stipulates that every year, a conference must be held for the executive heads of the federal government and the federal member state governments to discuss and agree on, inter alia, the security and peace of the country [Article 51 (3) (b)]. This is, in many ways, similar to a *guurti,* and practices and lessons from a *guurti* should be used to implement this Article. Subsection (5) (b) of the same Article

Al Shabaab is likely a spoiler group in Somalia: they gained their economic and political power in the context of state collapse, and may be unwilling for that context to now change.

states that a law passed by the federal parliament shall regulate "the establishment of guidelines that will facilitate the resolution of disputes between the various levels of government without resorting to court". These guidelines should be used by the Interstate Commission and should take into consideration the cumulative traditional wisdom in Somali society. This presents a great opportunity for traditional peacemaking mechanisms to be institutionalised with the legislative support of the constitution. Although the functioning or substantive content of the guidelines are not clear, certainly the opportunity is there for violent conflict to be prevented through the institutionalisation of meaningful mechanisms to address disputes.

Chapter 14 is entitled 'Peace and Security' and, as such, one would expect it to include opportunities to prevent violent conflict by resolving disputes. However, it would appear that the implication is that peace in Somalia will be won through the security forces, because the chapter deals exclusively with the principles (Article 127), mandate (Article 126), deployment (Article 126), ombudsman (Article 129), law (Article 130) and abuse (Article 128) of the security forces, as well as when a state of emergency may be called

(Article 131). Although this chapter does not aim to prevent violent conflict through mediation, negotiation or the implementation of *xeer*, it does not mean that it holds no opportunities to prevent violence.

Not all violent conflict in Somalia is due to unresolved disputes. There are also a number of groups who, for various reasons, want to see the current statebuilding process fail. One reason is that the state historically has been a source of wealth for those in power, and a predatory state for those outside the ring of power. Therefore, many Somalis see the revival of the state as a zero-sum game, and are concerned that they may be on the wrong side of that equation.[31] There are also those – such as warlords, criminal networks and Al Shabaab – that have gained their economic and de facto political power in the context of state collapse, and they are likely to be unwilling for that context to change. Such groups become spoilers, and will engender violent conflict to destabilise the statebuilding and peacemaking process, and often will refuse to enter negotiations. The military defeat of such groups by state security forces may be the only method to prevent violent conflict fuelled by the reasons listed above. The argument here is that there are

groups in Somalia whose interests are maintained through conflict, and that are unwilling to see that conflict transform into peace. The decisive military defeat of these groups is then likely to be the only option available to peacemakers – particularly if mediation is refused or rejected outright. Therefore, establishing security forces that are regulated by the constitution but are strong enough to deal with the security threats that seek to create violent conflict and bloodshed is both an opportunity and a vital pre-emptive strategy to preventing violent conflict.

Conclusion

Opportunities for preventing violent conflict in Somalia exist both within traditional and the proposed constitutional systems, and these opportunities should be capitalised on, both individually and in combination, where *xeer* can be used to bring more Somali meaning to the constitution. The principles and commission established by the constitution can benefit from certain *xeer* practices, such as *shir* and *guurti*, which still hold great legitimacy in much of Somalia – combined with, or extended to, include practices and people that historically have been excluded. As such, *xeer* could ensure that the constitution is authentically Somali and thus be appreciated and legitimated. At a time when the long-term crisis in Somalia has a real chance of ending, but is also so fragile, all opportunities for preventing violent conflict should be employed to their fullest potential. ◣

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SOUTH SUDAN'S 2013 RESURGENT POLITICAL CRISIS: THROUGH THE LENS OF SOCIAL CAPITAL

BY **ROBERT GERENGE**

Introduction

South Sudan, the world's newest state, was poised for significant political problems right from the onset. The deadly December 2013 violence that threatened the very existence of this new state is but the height of the political quagmire in which South Sudan has been wallowing even before its inception. Born out of secession from Sudan in January 2011, South Sudan is a product of an uncommon process, in juxtaposition to the rest of African states whose foundation was mostly through decolonisation. But like the rest of the African states at independence, the

disengagement process from the 'masters' was characterised by an aura of joy, perceivably signifying a departure from the painful memories of the past. With a 99% vote for secession marking a critical juncture of the Comprehensive Peace Agreement (CPA), the yearning for self-determination was expressly vivid for the Southerners, who had mostly been at war since Sudan's independence from Britain in 1956.

Above: South Sudan gained its independence from Sudan on 9 July 2011.

The Inter-Governmental Authority on Development (IGAD)-brokered CPA was signed in 2005 in Kenya between the Khartoum government and the Sudan People's Liberation Movement (SPLM), the key belligerents in the decades-long civil war. Like most post-independent African states, the post-secession euphoria in South Sudan dissipated fast in the face of subsisting hard social and economic realities, accentuated by growing insecurity that ran deep within.[1]

The main thrust of this article is that social capital is an important ingredient in the statebuilding process, a lack of which gave rise to the December 2013 political crisis in South Sudan. The concept of social capital insofar as it affects peace and conflict is reviewed in this article. This is followed by a review of the December 2013 violent conflict within the broader political problems facing the country. The statebuilding approach embraced by South Sudan is also appraised insofar as it relates to creating state capacity to regulate societal conflicts. In so doing, the article underscores that the statebuilding process is devoid of adequate social capital generation. Finally, the article explores the integration of social capital as a possible statebuilding strategy for South Sudan in the wake of the December 2013 political crisis.

Social Capital: A Causality of Conflict, the Recourse for Peace

The concealed but critical casualty of the prevailing inadequacies in South Sudan is the nation's social capital. Where the state capacity is under extreme stress, with little grip over the monopoly of legitimate use of force within its territory, experience in other post-conflict settings has shown that social capital can be an important instrument for conflict management in society.[2] However, in the existing discourse on South Sudan, the importance of social capital has not been accorded the necessary attention it deserves, particularly in mobilising the populace for a predetermined collective end: sustainable peace.

Social capital is the instantiated informal norm that promotes cooperation between individuals for mutually beneficial collective action.[3] During periods of armed conflicts, social capital is often hijacked and mobilised to form allegiances in the belligerent parties.[4] Social

Social capital is the informal norm that promotes cooperation between individuals for mutually beneficial collective action.

capital is useful in understanding the mobilisation of the 'Southerners' (predominantly black Africans) against the 'Northerners' (mostly Arabs) during the decades-long civil war in Sudan. It is also vital in understanding the December 2013 resurgent violence that broke out between the Dinka and Nuer ethnic groups in South Sudan. In both cases, there was a breakdown of trust, and violence contributed to social fragmentation by polarising communities and forcing individuals to take sides during the conflict. Despite intermittent conflicts that existed during the CPA's six-year transitional period, the massive rallying for secession demonstrated that there was still a dense stock of social capital that existed for the political leadership to nurture. To nuture and encourage constructive social capital, public policy that targets the (re)production of informal norms that promote cooperation among and across groups (ethnic, religious or otherwise) is critical. This is especially so in the context of South Sudan, where the state is likely to continue to be under stress in the medium term, in delivering much-needed public services and in regulating societal conflicts.

Generally, states do not have many obvious levers for generating social capital.[5] Social capital is frequently a by-product of religion, tradition, shared historical experience and other factors that lie outside the control of government.[6] Indeed, experience from countries such

as Uganda suggest that a better understanding of how the synergy between social capital and public policy can be strengthened is crucial to minimise conflicts over scarce natural resources.[7] In the south-western highlands of Uganda, a combination of voluntary associations (ranging from credit and savings groups and farming groups, to church-based groups) and the development of bylaws collectively contributed to managing conflicts in variable measures.[8] Since a considerable proportion of members of any particular group belonged to several other groups, such groups had the advantage of facilitating mediation and negotiation – a voluntary process in which conflict parties meet to reach mutually acceptable decisions, and to seek to create a win-win outcome.[9] From this experience, it can be deduced that the multiplicity in memberships which transcend 'tribal' borders created a dense network of shared interests among individuals – which, in effect, generated informal norms of cooperation based on embedded trust.

Social capital as observed in the Uganda example, therefore, has the capacity to restructure relationships to transcend specific groups (ethnic, religious or otherwise) and trigger the cooperative predisposition of individuals and engender the peaceful resolution of conflicts whenever they arise. All these cooperative engagements in Uganda were rendered possible through local policies that

encouraged the formation of informal groups. It is worth pointing out, however, that to buttress the structured resolution of conflicts through informal group networks, the local government developed bylaws that also facilitated a recourse to local councils by individuals, in cases where there were overlapping conflicts that therefore perceivably required an 'external' adjudication.[10] The success of this synergy between social capital and public policy is premised on complementarity and embeddedness: mutually supportive relations between local government and local communities, and the nature and extent of the ties connecting people, communities and public institutions.[11]

The Ugandan case described above does not demonstrate state failure, but rather limited state capacity to regulate conflicts, and thereby remedying this deficiency through recourse to social capital. However, experience in Liberia during its civil war demonstrated social capital as being useful for the survival of individuals in situations of total governance failure, and further forms an important building block in the reconstruction of post-conflict governance arrangements.[12] Liberian communities forged cooperative engagements with each other as a 'coping' mechanism against state-sponsored violence.[13] Consequently, in the ensuing post-conflict reconstruction period, these forged informal relationships among communities became critical in the mobilisation of joint efforts for local development, such as building schools.[14]

The December 2013 Violence: A Reminder of the Difficult Road to Statebuilding

The violence that started on the evening of Sunday 15 December 2013 in South Sudan claimed over 1 000 lives, with attendant dire humanitarian consequences, and presented a diametric departure from the aspirations of the new *body politique*. The violence began at the heart of the presidential guard and spread to rival units within the Sudan People's Liberation Army (SPLA) pitting the dominant Dinka ethnic group, from which President Salva Kiir comes, against the Nuer ethnic group, to which the former Vice-President Riek Machar belongs. The conflict quickly escalated, as it targeted the civilian population along this ethnic divide. Machar was sacked as vice-president by President Kiir in July 2013, in a cabinet purge apparently aimed at political rivals, thereby reviving the often-violent factionalism that has plagued southern Sudanese politics, even during the long North-South civil war.[15] Official sources stated that Machar was joined by various Nuer allies, including a militia leader, the former SPLA general Peter Gadet, whose troops took

GALLO IMAGES/REUTERS

South Sudan's former Vice President, Riek Machar, at his field office in a rebel controlled territory in Jonglei State (1 February 2014).

Jikany Nuer White Army fighters, a youth militia, in a rebel controlled territory in Upper Nile State (13 February 2014).

this is GALLO IMAGES/REUTERS vertical text on left

over the ethnic flashpoint town of Bor in Jonglei State, where Nuer fighters massacred Dinkas in 1991.[16] In the subsequent peace process under the auspices of the Intergovernmental Authority on Development (IGAD), seeking to resolve the resurgent political crisis is more than a daunting task, considering its protracted nature.

HAVING SAID THAT, IT WOULD BE NAÏVE TO EXPECT THAT BARELY THREE YEARS AFTER INDEPENDENCE, SOUTH SUDAN WILL HAVE AMASSED SUFFICIENT STATE CAPACITY TO REGULATE EVERY CONFLICT (INCLUDING LOCALISED ONES) ERUPTING WITHIN ITS BORDERS

The December 2013 crisis represents the height of governance failure in South Sudan, and has unfolded on the back of very pressing social and economic needs and war fatigue. The effects of the decades-long civil war aside, the six-year CPA transitional period witnessed other sporadic intra-southern Sudanese violence, which was mostly ethnic and resource-based and simply served to exacerbate the already precarious social conditions of the people.

Indeed, war-like tendencies had already begun to re-emerge in the face of challenging social and economic conditions in this CPA transitional period. At independence on 9 July 2011, it was more than evident that the new citizenry faced a difficult road in statebuilding, where everything was already either a 'need' or 'necessity' for most people. Basic infrastructure to deliver essential public services in South Sudan was minimal at best, compared to most African states at independence in the past century.

There is already much policy discourse on statebuilding in South Sudan, with a number of prescriptive policy tracks proffered for the new state.[17] The discourse has focused mainly on developing state capacity through building strong governance institutions. To this end, such institutions are expected to regulate the challenging security situation while sustaining the writ of the state. Consequently, deadly violence such as that which erupted in December 2013 would, in effect, be mitigated by these instruments of the state. The state is presumed to be autonomously deploying its infrastructural power by organising society in the interest of citizens.[18]

The reality facing South Sudan in light of the magnitude of the December 2013 violent conflict, however, is not only that of a weak state, but also one that is under siege. Having said that, it would be naïve to expect that barely three years after independence, South Sudan will have amassed sufficient state capacity to regulate every conflict

(including localised ones) erupting within its borders. Most African states have failed to achieve this in more than four decades after independence. Be that as it may, it is important to underscore the fact that the ongoing political crisis presents a serious threat to the social and political fabric of South Sudan.

Implications of Social Capital on the December 2013 Political Crisis

What is at stake following the December 2013 political crisis is the restoration of state as having the only legitimate monopoly on the use of force within South Sudan. Generally, in the face of the significant social, economic and political problems in the country, the effects of statebuilding will not easily be palpable in the short or medium term. This is in spite of massive exogenous support, mobilised mainly through the United Nations Mission in South Sudan (UNMISS). Indeed, experience elsewhere has shown that external intervention alone cannot provide lasting solutions to security and governance dilemmas within a society.[19]

The violent conflict in South Sudan presents a paucity of social capital on one hand and destruction of its existing stock on the other. The mobilisation of people along the Dinka-Nuer ethnic axis demonstrates that the underlying structural relationships between these communities are weak and susceptible to manipulation by political leaders. The scarcity of a dense network of overlapping associational memberships of informal groups with embeddedness of trust transcending ethnic confinements in South Sudan has rendered communities vulnerable to each other. Arguably, it is in this context of deficient structural relationships that one can also appreciate the politics of patronage in South

Sudan, in which access to political power is perceived to be for the benefit of only a particular ethnic group, to the exclusion of the other groups. The December 2013 crisis was thus poised to escalate rapidly along ethnic mobilisation in light of the subsisting structural fault lines (owing to and manifesting limited social capital between the Nuer and Dinka communities) a few months after the fallout between President Kiir and former Vice-President Machar.

It is worth noting, though, that the ethnic supremacy conflict between the Nuer and Dinka –which was evident even before independence in July 2011 – is also equally perceived as the quest for supremacy in the distribution of 'peace' and post-secession dividends. This detrimental entitlement is vividly illuminated by a leader of a local non-governmental organisation in Western Bahr el Ghazal, who commented:

> You know, our Dinka, during the war, there was nothing. After CPA, they start fighting. I went to Mundri, there was a big farm. And Dinka of Bor took their cattle there. They ate everything. But the *payam* administrator said we have no choice. Dinka says it belongs to them and they have a gun. I went to Torit and I heard that there is now a *payam* in Nimule called Bor [Dinka town and Garang's home] *payam*…For me I am thinking that they are thinking this Southern Sudan belongs to them. So they want to cover all the small tribes.[20]

This quote highlights communities at odds with each other, where informal norms of cooperation are either minimal or non-existent, and public institutions are incapable of regulating relationships among citizens. Arguably, this problem is a consequence of the statebuilding

A soldier walks past the bodies of 14 women and two men at the St. Andrews Episcopal Church in Leodar district, Bor (27 January 2014).

Increasing numbers of displaced people, who fled their homes following the escalating violence, arrive in Tomping camp in Juba (January 2014).

process in South Sudan. Indeed, the statebuilding approach embraced by South Sudan from the CPA transitional period, when it was still a semi-autonomous Southern Sudan, understandably emphasises the creation of strong institutions, and decentralisation that seeks to address the legacy of marginalisation by the north.[21] However, this approach works counterproductively, as the very same institutions lack accountability; particularly at the local level, as they have served to create "tribal fiefdoms" and become perpetrators of violence themselves.[22]

Thus, the existing statebuilding strategy in South Sudan should be revisited. The current process of institution strengthening needs to be sustained to ensure stronger accountability mechanisms. Coupled with this, conscious efforts to generate stock of social capital as a self-regulatory governance system of conflict management, among and across communities, to buttress the broader subsisting statebuilding mechanisms, need to be incorporated for sustainable peace in South Sudan.

In the light of the pressing social and economic needs in South Sudan, little investment has been directed at generating informal norms of cooperation among communities. This can be achieved through developing policies that encourage the formation of informal voluntary association groups (such as savings and credit self-help groups, farming groups and so forth) that specifically target collective actions for social and economic gains. Given that most of the conflicts are tied to competition for post-secession dividends, understanding the potential sources of social capital in the South Sudanese society offers insights for building self-governing capabilities of communities.

Put differently, understanding how people craft or adapt institutions of collective action can serve as a critical lens for developing their capacities for self-governance, which can be extended to embrace situations of governance failure and violent conflict, where survival is at stake.[23]

The policy trajectory proffered above seeks to contribute to diminishing the over-reliance on the already-strained state of South Sudan as the 'only' means of realising social and economic ends and, in effect, gratifying high expectations for 'peace' or post-secession dividends. It also aims at cultivating a dense network of overlapping memberships that create a broad embeddedness of trust that transcends specific group borders (whether ethnic Dinka or Nuer, religious or otherwise). These networks, as noted earlier, can also be useful structural mechanisms for regulating conflicts.

Conclusion

In the wake of the deadly violence of December 2013 that ravaged the new state of South Sudan, whilst the mediators and the belligerents alike are right to focus on containing the conflict, more is needed for the polity and society to be resistant to violent conflict. This article has underscored that social capital is a causality and casualty of the conflict in South Sudan. It has also demonstrated how social capital can purposively be mobilised for peaceful management of conflicts in a state that is under stress to deliver dividends for independence. The statebuilding approach in South Sudan, which favours formal institutional development alone in the face of high citizen demands for 'peace' or post-secession dividends, is bound to fail if it does not incorporate a new strategy of promoting informal norms of cooperation

Delegates attend the resumption of the South Sudan negotiations in Addis Ababa, Ethiopia on 11 February 2014.

among citizens. In this article, the December 2013 crisis in South Sudan highlights the competition for such dividends, with ethnic overtones. In light of this understanding, a policy trajectory is proffered to stimulate the generation of social capital in South Sudan that will contribute to the development of self-governing capabilities of communities, and serve as a structural mechanism for conflict regulation to complement the limited state capacity. ◭

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CONNECTIONS AND DISCONNECTIONS: UNDERSTANDING AND INTEGRATING LOCAL PERCEPTIONS IN UNITED NATIONS PEACEKEEPING

BY **NIELS NAGELHUS SCHIA, INGVILD MAGNÆS GJELSVIK AND JOHN KARLSRUD**

UN PHOTO/MARTINE PERRET

Introduction[1]

This article argues that the international community needs to do more to systematically collect, share and analyse local perceptions and ensure that they are used when monitoring progress towards key benchmarks and informing decision-making on the ground and at the United Nations (UN) Security Council and UN Secretariat/headquarters. Some practical recommendations are provided for policy-makers and the international community.

In the academic literature on peacebuilding, criticism of the UN and the international community as post-colonial and

arrogant vis-à-vis local circumstance has dominated. It is often believed that the staff working for these organisations are representatives of the 'Western world' and incapable of looking beyond their own ways of organising a society. Although local perceptions are integrated in peacekeeping operations, to varying degrees, this is not established as regular practice within the Department of Peacekeeping

Above: United Nations peacekeepers capture local perceptions in their daily work.

The Police Commissioner of the African Union-United Nations Hybrid Operation in Darfur (UNAMID), talks to people in Darfur. He leads a group of UNAMID specialists working to better understand the needs of the local population (13 May 2010).

Operations (DPKO), and no guidelines have been developed in this regard.

The criticism of liberal peace has not taken into account the more inductive parts of the UN apparatus actually designed to enable its peacebuilding efforts to be adapted to needs *on the ground*.[2] Our field studies have shown a will among external actors to analyse and understand the local political economy, and reflexivity on their own role in this. Travelling between rural areas and capital cities in Liberia, Haiti and South Sudan, we were able to investigate to what extent the UN has been able to capture local perceptions at various levels in three different countries where such work was being implemented. We found that there is an understanding of the importance of capturing local perceptions within the UN. However, as already mentioned, this poses several dilemmas and challenges regarding ethics, methodology, bureaucracy and coherency.

The issue of local perceptions is attracting greater attention within the UN and is being dealt with on a day-to-day basis by practitioners working in the field. UN peacekeepers capture local perceptions in their daily work – civil affairs officers, for instance, are spread extensively across host countries and meet individuals and groups every day. Together with other staff, they represent a vital source of information on the local population's needs and opinions, which is used at the local level but often gets lost further up in the hierarchy – in-mission, and at the UN headquarters in New York. This article examines the challenges involved in integrating local perceptions and achieving local ownership in peacebuilding processes.

Achievements, Challenges and Dilemmas

Understanding what people think and why they act as they do is fundamental to any political leadership. Peacekeeping and peacebuilding operations deal with core issues in the societies where they are deployed, and should be as concerned with capturing and understanding local perceptions as any government. This is crucial if they are to implement their mandate satisfactorily and support the development of sustainable peace, while also maintaining situational awareness and the security of their personnel.

Anna Lowenhaupt Tsing sees 'friction' as an awkward engagement between the international and the local.[3] Her focus is on the interface between the international and local levels, and how something new is produced in this meeting. Rather than searching for tensions between global and local concerns, Tsing's 'friction' encourages us to explore how processes related to peacebuilding are connected through, for instance, negotiations, interpretations and adaptations of formalised peacebuilding goals. We see the local people in host countries of peacekeeping missions not as helpless victims, or solely as actors of resistance, but as actors playing an active role in global processes and establishing global connections through everyday practices in post-conflict environments.

The UN, when trying to collect information on local perceptions, has used various approaches and methods. Interviews, focus groups, opinion surveys, local media, national staff, workshops and public meetings, social media and crowdsourcing are examples of tools that are applied. But despite the tools available and already in use, there has

United Nations peacekeepers visited a remote community in the Democratic Republic of the Congo (DRC), where Civilian Liaison Assistants (CLAs) work to create a link between the United Nations Stabilisation Mission in the DRC (MONUSCO) and communities whose civilians MONUSCO seeks to protect from violence (12 July 2013).

been a lack of a unified and consistent approach, as well as clarity as to the value and potential of local perceptions for peacekeeping operations. Up until now, it has essentially been a process characterised by incorporating local perceptions into situation analysis and early warnings to inform mission plans and activities, rather than using local perceptions systematically and directly to support the restoration of weakened societies and state apparatuses, and feeding into national policymaking processes.

The understanding of local perceptions is often present in the field, but needs to be better incorporated into broader mission and policy planning. Moreover, peacekeepers generally solicit local perceptions on short-term, immediate issues such as security incidents or political developments, but the systemic, root issues of conflicts are rarely considered.[4] This results in an emphasis on conflict management over conflict resolution.

Capturing Local Perceptions

Qualitative interviews, surveys, mixed methods and triangulation are widely used by practitioners and researchers in the process of capturing local perceptions. Field-based peacekeepers commonly employ in-depth interviews for collecting local perceptions, as they may yield rich, nuanced data. Continuous interpretation, adaptation and negotiation of peacebuilding goals – through open-ended probes, for example – can help correct misunderstandings and misinterpretations. Interviews and focus groups

can supplement surveys and make them representative, helping to avoid under-representation of marginalised groups. Moreover, in-depth interviews can be used to help formulate the most relevant questions for surveys, making the results more likely to be taken seriously and acted on. A great advantage when using interviews, surveys or both is that they provide information that can serve as a valuable counterpoint to the government's own performance indicators, and counter elite claims of 'speaking for the people'. Monitoring local media, public perception and opinion surveys, public town-hall meetings, peace polls and the Afrobarometer research project are practical examples of this approach.[5] What is important to note is that opinions are not necessarily facts. Informants and respondents are fully entitled to give incorrect information during interviews or surveys, and may for various reasons provide 'politically correct' responses regarding involvement in violence or voting intentions, and so on. However, regardless of whether the opinions and perceptions are correct or not, they are still highly important and need to be taken into account.

Another issue to keep in mind is when seeking not only to gather perceptions but also capture trends and measure peacekeeping activities and the work of peacekeepers, it is important to distinguish between research on broad patterns and trends, and research on the effectiveness of specific programmes and policies. How can perceptions contribute to indications of achievement over time? One alternative is to get fine-grained, geo-located data on what peacekeepers do,

The Civil Affairs section of the UN Operation in Côte d'Ivoire (UNOCI) organised a workshop with local chiefs in the town of Bonoua, Côte d'Ivoire (18 April 2012).

such as patrols, quick impact projects and so on. However, the challenges encountered in doing this have included data being incomplete, confidential or both.

Lastly, gathering information in areas of conflict and violence involves many dilemmas and risks. The security of staff and informants is of major concern, especially when dealing with sensitive thematic issues and questions of a political nature. Further, inadequate infrastructure, access to areas and information, communication and monitoring with personnel in the field can often prove challenging and costly.

Community Liaison Assistants and Community Alert Networks in MONUSCO

In eastern Democratic Republic of the Congo (DRC), the UN Organisation Stabilisation Mission in the DRC (MONUSCO) hired 202 community liaison assistants (CLAs) as of February 2013. These are local people, employed and trained by the UN, to facilitate interaction and confidence-building between MONUSCO and local communities, to set up communication networks and provide early warning on protection risks and advice on local needs. CLAs are recognised as a critical asset to MONUSCO and have proven very effective in identifying threats and needs, but they also face various challenges, including lack of transportation, functioning equipment and phone credits, and demands exceeding their capacity.[6] MONUSCO has also set up a system of Community Alert Networks (CANs), where cellphones have been provided to community focal points to create a direct link between local communities and MONUSCO commanders.

The CLAs and the CANs report to Early Warning Centres – hubs situated at the company level of the military contingents to enhance situation awareness and strengthen the ability to protect civilians. CLAs and CANs are examples of innovative developments for improving the ability of MONUSCO to capture, understand and integrate local perceptions into the daily decision-making of the mission, and enhance its ability to protect civilians. However, CLAs and local community focal points can also be exposed to considerable personal risks – a point to be carefully considered in applying these models to other missions.

Local Perceptions?

It is generally agreed that local perceptions matter. In practice, however, it is less clear what local perceptions actually refer to. In UN peacekeeping, it implies the connecting of some voices and concerns to the overall process, while disconnecting others. Hence, including local perceptions into peacebuilding processes poses a challenging dilemma to peacekeeping missions. On the one hand, this activity is crucial for the legitimacy and confidence-building of peacekeeping missions, while on the other hand, it may contribute to destabilising such processes. How to get this right, as well as how to justify the selection of some local voices while disregarding others, remain challenges for UN peacekeeping.

Current and former armed group members have been found to be the least common sources of information on local perceptions. The reasons for this may include limited interaction and access to this population, security risks, and taboos associated with speaking to such groups.

An online survey of peacekeeping personnel, conducted by the DPKO in connection with the ongoing process of developing guidelines for understanding and integrating local perceptions in multidimensional UN peacekeeping, showed that national colleagues were the most commonly cited source of information on local perceptions, on national and international issues. The second- and third-most commonly used sources of information were local government officials and civil society actors.[7] The survey identified that important uses of local perceptions in peacekeeping missions included anticipating security threats and identifying developments that could negatively impact the peace process. However, interestingly enough, current and former armed group members, militia and rebel groups emerged as the least common sources of information on local perceptions. Reasons for this may include limited interaction and access to this population, or security risks and taboos associated with speaking to armed groups. Nevertheless, missions should consider gathering information on the perceptions of interlocutors (paradoxically) seen as peripheral, in order to better understand their interests and grievances and inform mission strategies for advancing the peace process. Moreover, the survey showed relatively little consultation with local journalists and the private sector. Surely, this lack of interaction with the private sector is a significant gap, and one that should be addressed by missions and UN headquarters. It is, therefore, essential to broaden the sources of information when gathering local perceptions

by including a wider range of actors outside the mission, in addition to the mission's most common partners of collaboration and interaction.

From Polls to Policy

Various methodological tools can be used when seeking to capture local perceptions. The challenge then is how to use such information when developing policies and translating results into specific polices and recommendations. Surveys, for example, can prove very useful for framing a problem, but may not necessarily provide sufficient information on which to base decisions and policy – although they might give some indications of what is working and what is not.

A common frustration among field-based personnel who collect information on local perceptions is that the information they report is not properly used by mission leadership or headquarters in New York. This reflects a finding by Schia and Karlsrud, who argue that while there is "a premium on understanding the local political dynamics", acquired knowledge in the field is often not put to use further up in the hierarchy.[8] One reason for this disconnect may be that information is not collected or analysed in ways relevant or easily incorporated into policy planning, but also to a certain extent diverging organisational *everyday concerns* between the personnel in the headquarters in New York and those deployed to the field.

Informing Decision-making in Liberia

Various units of the UN Mission in Liberia (UNMIL) cooperate to capture and understand local perceptions in Liberia, emphasising that 'local' does not necessarily mean 'rural'. Two-thirds of the population lives in Monrovia, and a main priority of the mission is to understand the various concerns and needs of urban residents – the youth in particular. The mission has instigated mechanisms to avoid stove-piping, ensure that information is shared across the mission, and ensure that senior leadership is fully informed. While these mechanisms seem intuitively obvious, they are unfortunately seldom found in UN peacekeeping operations.[9]

Recommendations: From Local Perceptions to Practice and Policy

• *Methodological approach – outsourcing:* Capturing local perceptions through surveys requires methodological expertise. Data accuracy should be ensured by triangulating methodologies and data. The international community and the UN should ensure the accuracy of data when outsourcing public surveys on local perceptions, and when preparing guidelines on options and caveats concerning how and when these can be used in peacekeeping.

• *Methodological approach – in-house:* To conduct and interpret surveys, staff must be properly qualified and trained. Instead of introducing complex and expensive new techniques, DPKO should seek to improve the

collection of local perceptions through interviews, focus groups and other easy-to-learn methods.

- *Expertise:* The UN needs a mechanism to ensure good partnerships. Highly technical research requires expertise. Two ways of establishing partnerships can be envisaged: 1) in-house capacities who work with partners and outsource surveys; and 2) using consultants – UNMIL has worked with academics, the World Bank and others.

- *Integrate:* The UN should 'mainstream' local perceptions into political analysis and planning at the mission level and headquarters at New York.

- *Knowledge-sharing:* The UN should heighten the focus on the transfer of knowledge and communication of best practices between headquarters in New York, mission headquarters and the field.

- *Nationals and internationals:* UN national staff and the local population are the 'real' experts on local perceptions: they have access to key information and often a better understanding and overview of the situation and the context. However, it must be borne in mind that national staff are not uninvolved with the fate of their country, and are rarely neutral or impartial.

- *Political buy-in:* Over-focus on the field may lead to a disconnect between the UN and political elites. It is crucial to involve the political elites in the bottom-up approach – at the end of the day, they are the ones who make the executive decisions concerning the country in question.

- *Infrastructure and partnership:* The UN should establish partnerships with national universities and researchers to strengthen capacity and improve the analysis of data. MONUSCO is currently collaborating with the UN Development Programme (UNDP) on such a project. Further collaboration between the DPKO, UNDP and the host governments (for example, the ministries of interior, planning and justice) should also be developed.

- *Transparency* of research, data and findings should be the rule rather than the exception, even if the results diverge from the 'official' story.

- *Funding:* Funds for capturing local perceptions through surveys and other methods that require financial support should feature in the budget, to ensure regularity of baseline studies and surveys. This should be coordinated with the UN Country Team.

UN PHOTO/STATON WINTER

One of the main priorities of the United Nations Mission in Liberia (UNMIL) is to understand the various concerns and needs of urban residents – the youth in particular.

Conclusions

Understanding what people think, at all levels of society, is instrumental to the process of aiding any society towards peace and prosperity. Recently, this has been recognised and acknowledged by the UN, the World Bank and other central actors. However, findings presented in this article show that:

1. capturing and understanding local perceptions on the ground has been done to a great extent, but usually through a piecemeal approach or in an ad hoc manner, resulting in limited sharing of knowledge and experiences between peacekeeping operations, as well as between components within missions;[10]

2. systematic survey tools and methodologies can be difficult to master and integrate fully; and

3. differing scientific methodologies, ethical considerations and the need for consultants represent challenges that must be considered if the aim is to capture and understand local perceptions in a more systematic way.

UNDERSTANDING WHAT PEOPLE THINK, AT ALL LEVELS OF SOCIETY, IS INSTRUMENTAL TO THE PROCESS OF AIDING ANY SOCIETY TOWARDS PEACE AND PROSPERITY

The increased focus by policymakers on understanding and capturing local perceptions have sparked a debate on how UN peacekeeping may go about this in a more systematic manner. This debate may enhance the confidence-building of peacekeeping missions and thus increase the legitimacy and sustainability of peacebuilding processes. However, this debate may also nurture a more proactive approach of the missions on activities that inevitably will connect certain local processes, forces, traditions, customs and groups of people while disconnecting others. Hence, the focus on local perceptions may bring increased stress to local communities, because it potentially has effects on the existing power structures in the host country. Thus, if not performed with caution, the potential drop associated with increasing the level of this activity can be substantial. Nonetheless, awareness of this dilemma seems important. It has not been our intention to present a recipe for international actors on how to solve this Gordian knot – simply to point out some challenges pertaining to this aspect of peacekeeping missions. We have also provided some recommendations on how one may proceed to better include and transform this insight into policy and practice. ◣

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Endnotes

1   This article is based on findings from fieldwork conducted in Haiti, South Sudan and Liberia from the research project 'Contextualizing Peacebuilding Activities to Local Circumstances (2011–2012)' and the workshop 'Understanding and Integrating Local Perceptions in the Work of Multi-Dimensional UN Peacekeeping Operations', held in Kampala, Uganda from 26 to 28 February 2013. The workshop included practitioners, policymakers and academics and was co-hosted by the Norwegian Institute of International Affairs (NUPI) and the UN Department of Peacekeeping Operations (DPKO). Funding was provided by the Training for Peace in Africa programme (TfP) at NUPI.

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THE ANATOMY OF MASS ACCOUNTABILITY: CONFRONTING IDEOLOGY AND LEGITIMACY IN RWANDA'S *GACACA* COURTS

BY **JANET MCKNIGHT**

Introduction

Chief Justice of Rwanda Sam Rugege refers to his country's genocide, in which nearly 800 000 ethnic Tutsis were killed from April to July 1994, as a "circumstance that should never have arisen in the modern world".[1] The modern world's failure to intervene militarily during the genocide was coupled with the International Criminal Tribunal for Rwanda's (ICTR) inability to provide efficient and wide-reaching justice in the aftermath of the atrocity. Seven years after the genocide, the slow progression of ICTR prosecutions of the highest-level perpetrators, combined with the limited logistical resources of Rwanda's national courts, led the country to revamp local dispute resolution forums called *gacaca* ('on the grass'). *Gacaca* operated from 2002 to 2012 in thousands of villages across a country in which virtually every member of society was a killer, a criminal, a victim or a witness.

This article presents a brief overview of the genocide and subsequent legal responses. This will be followed by an outline of various criticisms of *gacaca* in terms of its

Above: The slow progression of the International Criminal Tribunal for Rwanda's inability to provide efficient and wide-reaching justice in the aftermath of the genocide, led the country to revamp local dispute resolution forums.

effectiveness and legitimacy as an innovative but untested approach to mass accountability. *Gacaca*'s attempt to instil far-reaching but intimate justice – mirroring the genocide in its staggering scope, meticulous organisation and ambitious execution – will be assessed against post-genocide concerns of reintegration, but also societal needs of reconciliation that predate 1994. Rather than deter specific acts of violence, *gacaca* aimed to eradicate an entire culture of impunity that permitted mass complicity in genocide. Ultimately, this article highlights key areas of debate on *gacaca*'s operational procedures, legitimacy and effectiveness – all of which help to explain early evaluations of *gacaca* as a controversial model of transitional justice. It is then argued that *gacaca*'s long-term legacy needs to be evaluated in light of its attempts not only to meet mass violence with mass accountability, but also to confront historically ingrained violent ideologies throughout the country.

A History of Conflict in Rwanda

The polarisation of Rwanda is rooted not so much in ethnicity as in socio-economic differentiations traced to precolonial times, when the cattle-herding Tutsi minority became the bureaucratic administrators over agriculturalist Hutus in the Kingdom of Rwanda. Nineteenth-century Belgium colonisers exacerbated this hierarchy by issuing identity cards in 1933, politically reinforcing such divisions. With the 1957 Bahutu Manifesto arguing for political dominance by the ethnic majority, violence against Tutsis was sparked and an ideology of genocide was germinated. With independence from Belgium in 1962, Hutus came into power as 300 000 Tutsis fled to Burundi, Uganda and Congo.[2] In 1990, President Juvénal Habyarimana declared a multiparty democracy, opening the floodgates of political and media-driven messages of hate from extremist radio stations and propagandist newspapers to warn against the return of Tutsi exiles. On 1 October 1990, the Tutsi-led Rwandan Patriotic Front/Army (RPF) attacked the Rwandan Armed Forces (FAR), sparking a civil war.

The 1993 Arusha Accords called for a power-sharing government, though few believed Habyarimana's genuine intention of respecting the peace agreement. On 6 April 1994, Habyarimana's plane was gunned down over Kigali, killing Habyarimana and Burundian president Cyprien Ntaryamira. Within hours, Habyarimana's tight-knit circle of

A Rwandan caretaker examines a display of human skulls, the remains of some of the 5 000 Tutsis massacred in the Ntarama Church compound in April 1994, during Rwanda's genocide (16 June 2002).

Hutu extremists activated the command to exterminate all Tutsi 'cockroaches' and moderate Hutu or Twa sympathisers. Within two weeks, 250 000 were dead by the hands of *Interahamwe* militia and civilians wielding machetes, spiked clubs and automatic rifles.[3] By May 1994, approximately 75% of the Tutsis in Rwanda had been killed.[4] Although genocidal ideology is simple in theory, such an alarming rate of slaughter shows that the execution of genocide demands efficient organisation, methodical implementation and incredible ambition on the part of the orchestrators. With the international community providing little real assistance through the United Nations Assistance Mission for Rwanda (UNAMIR), the RPF alone took Kigali and ended the genocide on 17 July 1994.

International, Domestic and Traditional Responses to Mass Atrocity

Unlike some post-conflict judiciaries that remain fully functional but corrupt after civil war, Rwanda's legal system was devastated by the genocide, leaving only 14 prosecutors in the country.[5] Over 120 000 suspected *genocidaires* were arrested and detained in prisons meant to house 45 000.[6] Soon after taking power in 1994, President Pasteur

Bizimungu requested that the United Nations (UN) establish an international ad hoc tribunal for the purpose of holding to account perpetrators of "genocide and other systematic, widespread and flagrant violations of international humanitarian law" committed from January to December 1994.[7] Established with concurrent but primary jurisdiction over Rwandan courts, the ICTR in Arusha found that gaining custody of exiled suspects and gathering evidence in a post-conflict country posed the same challenges to international and domestic courts alike.

Domestically, Rwanda looked for ways to uphold its legal obligations under international treaties, including the 1948 Genocide Convention. The 1996 Organic Law established tiers of crimes, to be tried in Rwanda's national and military courts. Within a few years, national courts had heard only 3% of the genocide backlog (approximately 2 500 cases), while thousands were held without formal charges or trial.[8] This slow materialisation of accountability was exacerbated by Rwanda's use of capital punishment and reports of extrajudicial executions in villages. To manage the enormity of cases and intensifying urgency for justice, methods of accountability would need to address not only individual criminal liability in courtrooms, but also the eradication

Genocide suspects confess their role in the 1994 killings to receive reduced sentences at Myove prison in Byumba village, Rwanda (8 February 2005).

of historic ideologies that had created an entire criminal population in the streets.

Rwanda's initial response of retributive justice through international and domestic prosecution of those most responsible for the genocide can be viewed as a decision meant to gain global support for the new RPF government. Alternatively, the decision to utilise retributive justice measures may simply be reflective of developments in the field of transitional justice at the time. For example, the ICTR followed on the heels of the ad hoc International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993. In the 1980s and 1990s, Latin America experimented with restorative justice mechanisms in confronting human rights violations of prior regimes by means of societal reconciliation and sustained peace. Restorative truth mechanisms typically replace law with ethics and reframe post-conflict reconstruction around questions of victims' right to truth and states' duty to discover truth. Such restorative mechanisms are increasingly thought to be inconsistent with the developing customary law duty to prosecute human rights violations through criminal accountability.

Immediately after Rwanda's genocide, ideas of amnesties and truth commissions were raised, but rejected

for fear of leniency that would result in victims' vengeance. *Gacaca* was also considered, but abandoned because of its historically limited usage for common crimes. By 1998, the idea of restructuring *gacaca* again emerged with what would become the *Gacaca* Law, outlining groups of crimes consistent with the 1996 Organic Law:

- Category 1 crimes of genocidal organisation, rape and sexual torture tried in ordinary courts; prison sentence of 25 years to life and possible capital punishment;
- Category 2 crimes of genocide and serious assault causing death tried in districts; prison sentence of seven years to life and loss of civic rights;
- Category 3 crimes of serious assault tried in sectors; prison sentence of one to seven years; and
- Category 4 property crimes tried in cells; penalty of compensation. Cells also investigate crimes and categorise suspects.[9]

An honest and complete confession resulted in reduced prison time or community service. The decision to empower *gacaca* with punitive sanctions rather than amnesties reflected the commitment against impunity, regardless of the tireless task of prosecuting 10% of the population. Punitive sentences were commuted upon confessions – requiring

apology, naming of accomplices and providing details of crimes – all professed before a perpetrator was named as a suspect.

In January 2001, the Transitional National Assembly passed the *Gacaca* Law to promote the "reconstitution of the Rwandese society".[10] October 2001 saw the election of 250 000 *gacaca* judges, ethnically representative and respected members of the community. A pilot phase of *gacaca* was launched in June 2002, and all 11 000 jurisdictions were fully operational by January 2005.

Gacaca under Fire: Criticisms of Effectiveness and Legality

1. Due process

In January 2003, the first wave of accused were released from overflowing jailhouses and returned to their communities to await *gacaca* trials. Nearly 66 000 suspects were provisionally released over the next few years, and housed in solidarity camps.[11] *Gacaca* cells quickly amassed a list implicating 700 000 suspects, leaving *gacaca*'s approach to accountability vulnerable to the same overcrowded justice experienced by the national courts.[12] With a deficiency of resources, the decision to ban lawyers from *gacaca* was an attempt to provide an even playing field for all defendants. As a result, human rights organisations criticised *gacaca* as

inconsistent with minimum guarantees for fair trial, including the right to counsel. In addition, a conflict of interest was presented, with *gacaca* judges helping to formulate the accusations of the individuals they would later judge. While perpetrators tried for the gravest crimes in the ICTR enjoyed defence counsel and a presumption of innocence, *gacaca* sentences were rendered by a majority of nine judges.

The *Gacaca* Manual established procedural safeguards, such as the postponement of trial if key witnesses were not available and immediate acquittal if a plea of innocence was not countered by witness testimony or public prosecutor evidence. All *gacaca* courts were subject to judicial review by the *Gacaca* Commission, and local organisations monitored meetings to prevent witness intimidation. Appeals were permitted for all except Category 4 convictions; however, many unenforced judgments involving payment of reparations highlighted the dangers of *gacaca*'s focus on conceptual matters of ideology at the expense of pragmatic aspects of victim livelihood.

2. Coerced traumatisation

The underlying tenet of *gacaca* was the notion of popular ownership over a society's own justice, as promoted by *gacaca* quorums of 100 people. However, *gacaca* is criticised as walking a thin line between facilitated and coerced participation, with witness testimony being made a moral

A witness addresses a *gacaca* court in Rukira, Rwanda (3 December 2003).

Many victims felt *gacaca* lacked guarantees of confidentiality and forced a woman to unearth secrets, such as that related to rape and sexual torture, that could result in her social isolation.

obligation under the 2001 Organic Law: "[N]obody having the right to get out of it for whatever reason."[13] Seeking testimony from people recovering from mass atrocity risks converted the promise of victim participation into a duty to partake in further traumatisation. The question of mandating public suffering is especially pertinent in cases of rape and sexual torture, of which 8 000 such cases were transferred to *gacaca* following a 2008 modification of the law.[14] Many victims felt *gacaca* lacked guarantees of confidentiality and forced a woman to unearth secrets that could trigger her social isolation. Minimal provisions were made to combat these fears, such as allowing a rape victim to submit written testimony and to disqualify judges.

Furthermore, *gacaca*'s effectiveness in promoting genuine reconciliation and forgiveness for acts of genocide was questioned as highly improbable, especially if confessions were motivated by a lesser sentence rather than sincere repentance. Inaccurate or false testimony also caused concern, as time can warp one's memory of events, and because many survived by successfully hiding from rather than witnessing the violence. *Gacaca* jurisdictions with low attendance revealed perceptions of judicial corruption, fear

of exposure to Hutu retaliation, or the financial inability to miss a day's work.

3. Collective guilt

Gacaca's delicate balance of restorative measures and criminal punishment also risked the appearance of collective guilt. It is estimated that as many as 210 000 ethnic Hutus participated in the genocide, leaving upwards of five million Hutus having little to no involvement.[15] As every Tutsi was seen as an accomplice of the RPF, every Hutu was assumed to be a *genocidaire*. *Gacaca*'s appearance of mass accusation regrettably emulated the genocide's mass victimisation, underscoring the negative aspects of mirror imaging justice and crime. Furthermore, *Intwali* (Hutus who sheltered and protected Tutsis during the massacre) were concerned with how their past acts of ethnic impartiality might affect their future reconciliation with other Hutus, who regarded *Intwali* as traitors or "troublemakers".[16] Meanwhile, *gacaca* defendants considered themselves merely victims of an unsuccessful defence waged by the Hutu government against the threat of a Tutsi armed rebellion. From different perspectives, every participant in *gacaca* was a victim.

4. Victor's justice

En route to taking Kigali, the RPF was able to capitalise on the world's sympathy and committed its own grave breaches of human rights, which resulted in an estimated 25 000 to 45 000 deaths of Hutu soldiers and civilians.[17] To date, no RPF members have been indicted in *gacaca* courts or the ICTR, while Rwanda's courts have tried a single case against RPF officers for killing Hutu bishops.[18] In 2000, the night before the election of *gacaca* judges, a radio broadcast from newly installed president Paul Kagame announced that RPF crimes would not be dealt with, despite the scope of *gacaca* jurisdiction to allow for such cases. Although most *gacaca* judges were Hutu, the process hinted at victor's justice due to its selective prosecution of Hutus, and the intimidation of victims or judges who showed interest in exploring the possibility of RPF crimes.

Transcending Ideology through Mass Accountability

Departures from minimum standards of due process can certainly frustrate post-conflict democracy building. However, issues of justice and the rule of law rarely remain isolated from political environments, meaning that transitional processes are often subject to a degree of compromise.[19] Rwanda's transitional choices illustrate how the unabridged realisation of justice cannot emerge from the post-conflict rubble without due regard for political and societal fractures, including historical ideologies that,

if not addressed, risk the re-emergence of violence. Overall, *gacaca*'s attempt to collectively discover the underpinnings of genocide, at the risk of exposing personal trauma and accepting a degree of distorted information, was calculated against the dangers of permitting collective impunity. Therefore, *gacaca*'s effectiveness should be judged in terms of its success or failure in confronting the widespread culture of genocide *in addition to* its effective or ineffective punishment of individual acts of genocide. In this sense, forgiveness is not the sole factor in alleviating the cycle of revenge. The unifying experience of truth-telling and holding perpetrators to account through an interactive sociolegal process of justice helped to compel cohabitation and non-violent coexistence.

Suspicions of *gacaca* as one-sided justice or as a means for the RPF to disperse vengeance may only cause the gap between political actions and ethnic convictions in Rwanda to become further indistinguishable. What is important to note is that any 'justice divide' along political or ethnic lines is not necessarily a product of *gacaca*, but more likely a symptom of decades-old societal beliefs influenced by precolonial land ownership, political tactics of colonisers and the momentum of Hutu power. At a surface level, *gacaca* trials may not have reflected a nuanced philosophical dissection of sociopolitical tensions. However, to prevent future genocide, Rwanda's 10-year experiment in mass accountability must be evaluated with an appreciation of *gacaca*'s effects on mass

Community members from Kigali's Gikondo District One attend a session of the *gacaca* grassroots tribunal (28 March 2004).

understandings of historical divisions that lead to genocidal violence.

In any post-conflict process of transcendence, transitional governments often feed into semi-fabricated narratives to establish regime legitimacy. Although restorative justice is meant to repair rather than conquer, chronicled accounts of tragedy are usually rendered by those in the best position to ask the questions of history. That said, even the RPF's highly centralised government has limited reach to control the 'truth' narrative of 11 000 communities. More likely, *gacaca* utilised participants' intimate accounts of violence from all sides to allow Rwandans to contribute to each other's understandings of the genocide in his or her own experience of the events. Therefore, *gacaca* may come to more accurately be considered 'survivor's justice', by having allowed all Rwandans to identify as collective survivors of a long-standing ideological war.[20]

Conclusion

Gacaca's genocide courts were officially closed on 18 June 2012, having processed upwards of two million cases, with a reported conviction rate of 65%.[21] *Gacaca*'s ambitious endeavour undermined *genocidaire* preconceptions that accountability could never be addressed if everyone was implicated. Although it may seem severe to convict civilians who could only explain their murderous actions in terms of obedience or force of threat by *Interahamwe*, the alternative was to allow impunity to transmit itself from generation to generation. Most criticisms of *gacaca*, although not unfounded, stem from an inability to consider *gacaca* within its multilayered purposes of retributive, restorative and *preventative* justice. Altering collective beliefs embedded in historical, political and social frameworks required a multilayered approach of "confessions *and* accusation, plea-bargains *and* trials, forgiveness *and* punishment".[22]

With an 85% rural population, *gacaca*'s accessibility allowed (or forced) Rwandans to experience the mass retelling of tragic events in an intimate setting. Confessions alongside witness testimonies formed the portrait of a genocidal society – a disturbing image to be entered into the public domain to ensure the impossibility of ever denying or erasing all that had happened. Rather than allowing the genocide to solidify historical disunities, *gacaca* utilised individual grief as a bridge to social commonality and to prioritise peaceful coexistence rather than continued philosophies of hate. Therefore, future assessments of *gacaca* will benefit from the understanding that Rwanda was not only attempting to stop the bleeding caused by the latest surge in violence, but also to innovatively cure the chronic injury of genocidal ideology. ⚠

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WHAT IT TAKES TO BRING PEACE TO THE EASTERN DRC

BY **PIERRETTE QUINTILIANI**
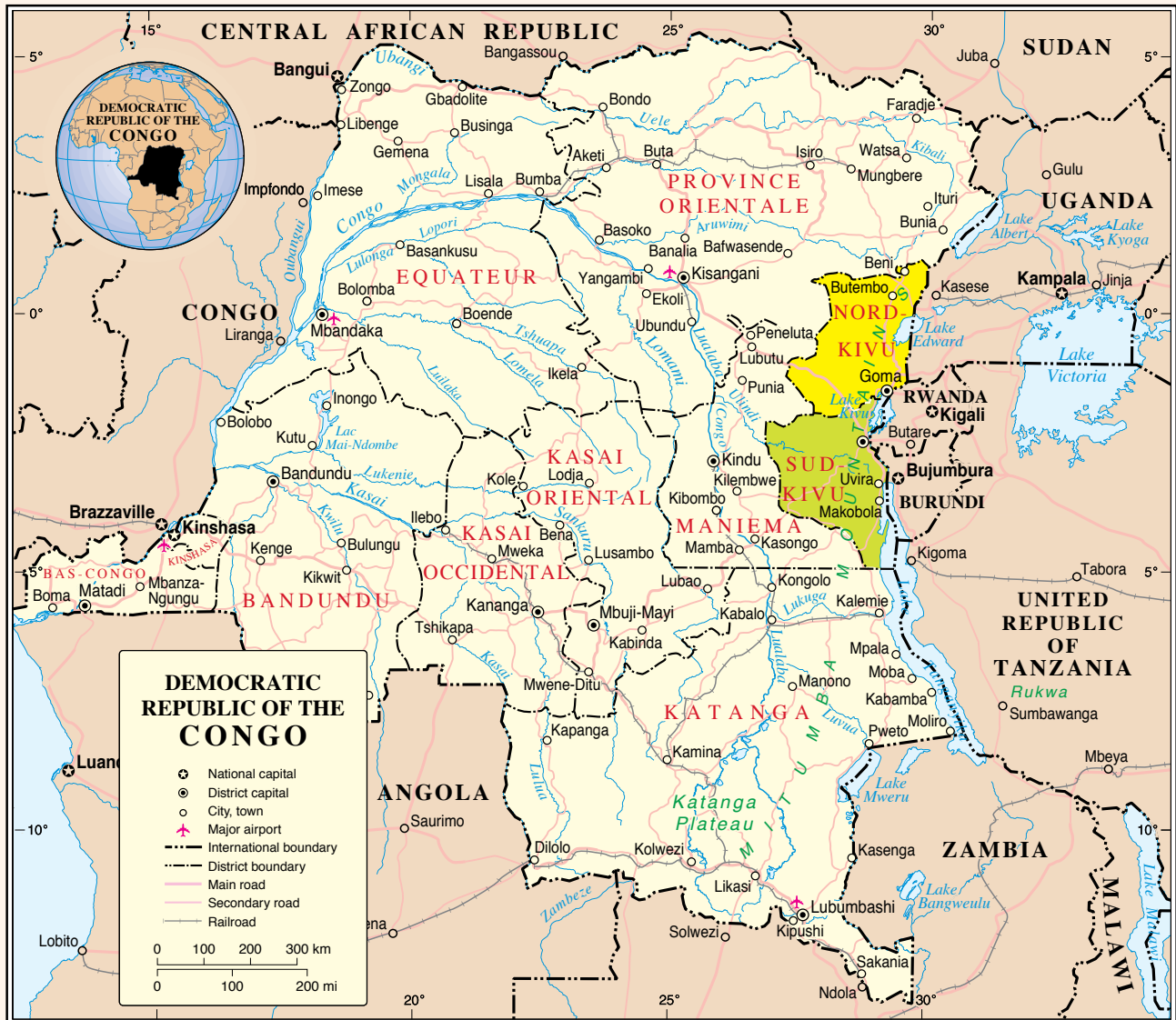
One of the latest armed rebellions started in 2012, led by the March 23 Movement (M23) in the eastern region of the Democratic Republic of the Congo (DRC). It was brought to an end – at least momentarily – in late 2013. This is not the first time that we have heard such rhetoric about the 'successful' ceasing of armed conflict in this region – but, for the first time since 1997, the government, with the support of a broad range of regional and international actors, has

been an active player in this success story. Although many militias and armed groups still roam the eastern region of the DRC in particular, committing abuses of all sorts and displacing large numbers of the population, the model adopted to defeat M23 shows that peace can be brought to the region when the right mix of political instruments is used and, above all, when political determination prevails. This article analyses the elements that brought M23 to the

People flee as fighting between the Congolese Armed Forces (FARDC) and M23 intensify in Rutshuru Territory of North Kivu province (27 July 2012).

negotiation table to sign a peace agreement, and highlights the remaining major problems that prevent the complete and lasting stabilisation of the region.

DURING THE 20 MONTHS OF HOSTILITIES SINCE ITS FORMATION, THE REBELS DISPLACED AN ESTIMATED 800 000 PEOPLE

Introduction

M23 emerged in 2011 when members of the *Forces Armées de la République Démocratique du Congo* (FARDC) deserted the regular army, due to the poor living conditions and salaries provided by the Congolese government. Most of them were former combatants who belonged to the *Congrès national pour la défense du peuple* (CNDP), an armed group with a broad Tutsi base that was integrated into the regular armed forces, following a peace agreement reached with the government on 23 March 2009. M23 was a medium-sized group, estimated to include 1 500 to 2 000 rebels. During the 20 months of hostilities since its formation, the rebels displaced an estimated 800 000 people;[1] seized Goma (the regional capital) and smaller towns and villages in Bunagana, Rynyony, Kanyaruchinya, Rutshuru and Tshanzu;

abducted children; murdered civilians and raped many members of the civilian population.[2]

While it is not the first time a militia group has been dismantled in the region, the operation is considered a success because of the rapidity with which it was conducted, the determination of all the actors involved to succeed, and the robust political and military leadership deployed. The successful recipe for this achievement included the following ingredients.

A Reinforcement of MONUSCO

In 2010, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) took over from a peacekeeping operation, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC). Due to the classification of the country in the category of "early, into post-conflict", the mission was downgraded, resulting in the transformation of the peacekeeping mission into a stabilisation mission in accord with United Nations (UN) Security Council Resolution 1925. The mission still included the protection of civilians against armed groups, the monitoring of the implementation of an arms embargo and the provision of technical and logistical support for the organisation of local elections. The high level of combatants still prevalent in the Kivu region called for a review of the MONUSCO

MONUSCO peacekeepers work with government troops to secure Bunagana, a town in the country's North Kivu province, against attacks from the M23 rebel group (23 May 2012).

mandate, as daily reports of atrocities committed against civilians surged. Overall, since its inception, MONUSCO has been criticised for its lack of effectiveness and preventive action, specified in an agreement[3] aimed at reinforcing the peacekeeping mission and reached between the DRC and 10 regional states on 24 February 2013, under the auspices of the African Union (AU), the UN, the Southern African Development Community (SADC) and the International Conference on the Great Lakes Region (ICGLR). The Peace, Security and Cooperation (PSC) Framework developed a set of coordinated regional, national and international actions aimed at ending the violence in the region. A highlight of this comprehensive framework has been the creation of a force intervention brigade (FIB) which, under UN Security Council Resolution 2098 (2013), was to "neutralize and disarm" and use "targeted offensive operations" against M23 and other rebel groups operating in the region. The FIB comprises 3 000 peacekeepers from South Africa, Malawi and Tanzania, and operates under MONUSCO.

In addition, due to the nomination of Martin Kobler – a strong and experienced head of the civilian UN mission – and to the nomination of a new military head – General Carlos Alberto dos Santos Cruz, a Brazilian veteran officer – the UN has changed its approach by adopting a stronger and more aggressive stance, not only towards M23 and

other militia groups in general, but also by supporting the Congolese army more actively.

Getting Rwanda and Uganda to Stop Support of Rebel Groups

Since the genocide in 1994, Rwanda has always been afraid of the resurgence of former members of the *Interahamwe*, who reorganised themselves after escaping justice and took refuge in the eastern DRC. Rwanda's fears are not unfounded, since the *Forces démocratiques de libération du Rwanda* (FDLR) – a rebel group operating in the eastern DRC – is composed of former *Interahamwe* and *Forces armées rwandaises* (FAR) members, with the main preoccupation of lessening the Tutsi influence in the region and regaining control of Rwanda. The protection of the country has also been used as a pretext to exploit the region's riches. If M23 had continued to be actively supported by Rwanda and, to a lesser degree, by Uganda, the operation led by the FIB would probably not have succeeded. Even though the Government of Rwanda has consistently refused to acknowledge its involvement with M23, numerous sources of information – including the UN Group of Experts for the DRC and Human Rights Watch – allege that Rwanda has helped M23 with recruitment by encouraging the desertion of soldiers from the FARDC and by providing weapons and ammunition. The report[4] documented that Rwanda's

Presidents (from left) Salvar Kiir of South Sudan, Joseph Kabila of the DRC, Yoweri Museveni of Uganda and Paul Kagame of Rwanda at the International Conference on the Great Lakes Region (ICGLR) Head of States emergency summit in Kampala (5 September 2013). ICGLR member states condemned the resumption of hostility in the eastern DRC and ordered the resumption of peace talks between M23 rebels and the government in Kampala.

Minister of Defence, General James Kabarebe, was M23's commander, and that some senior officials of Uganda's government had also supplied weapons and provided technical assistance, planning and troop reinforcements. Intense international pressure on the Rwandan government, including intervention by United States (US) Secretary of State John Kerry, as well as negative international press coverage and the withdrawal of some foreign assistance to the Government of Rwanda, convinced the Rwandans to cut the supply line to M23, at least for now.[5]

A Broader Coalition of African Leaders

Intense, behind-the-scenes diplomatic efforts were deployed to develop a strategy to bring M23 to the negotiation table during the ICGLR Summit in Kampala in September 2013. Background work was also done to bring together the main stakeholders in the conflict, including presidents Yoweri Museveni of Uganda, Jakaya Kikwete of Tanzania and Paul Kagame of Rwanda. While the security chiefs of various sub-Saharan African states were working on some recommendations that aimed to address the M23-led conflict in the DRC, Kabila's security officials were still refusing to accept a ceasefire; they insisted on the

precondition that M23 would end all military activities, and had to be convinced to withdraw this condition. Despite a highly tense atmosphere, the diplomatic efforts to organise meetings between the Rwandan and Tanzanian presidents, in particular, succeeded in bringing to light some previous misunderstandings between the two men over an alleged sympathetic connection between the Tanzanian president and the FDLR.[6]

The Congolese Army

While the Congolese army remains under fire for ongoing corruption and perpetration of violence that includes the plundering, torture and rape of civilians, some key abusers have been removed, resulting in the elimination of some of the parallel chains of command that are detrimental to any stabilisation efforts in the region. In addition, the troops, who are usually unpaid and underfed, were provided with water, fuel, food and adequate logistical support during the operations that eliminated M23. However, support to the Congolese army mainly came from MONUSCO, with the Congolese government still reluctant and unable to support a stronger establishment of its regular army.

WHILE THE MILITARY SUCCESS OF A STRONGER COALITION SUCCEEDED, AND WILL SUCCEED AGAIN, TO OVERTHROW MILITIA GROUPS THAT REMAIN A SERIOUS THREAT TO STABILITY IN THE REGION, THERE ARE AN ESTIMATED 30 TO 40 ARMED GROUPS THAT ARE STILL VERY ACTIVE

A Stronger International Team

While many Congolese have a perception that outsiders are disinterested in helping to bring these conflicts to an end, based on the belief that the country's natural riches are targeted, it must be noted that the apathy of the government and the low ranking of DRC internal affairs on the international agenda bear a large responsibility in this apparent impossibility. For example, the US and a few European countries have contributed to more than 40% of the budgets of Rwanda and the DRC for over 20 years,[7] but they have seldom used these contributions to leverage diplomatic and political efforts to end the conflict. In early

2013, former Irish president Mary Robinson was appointed UN Special Envoy to the region, and Russ Feingold, a former US senator, was appointed US Special Envoy to the region. Both have influential reputations and are active players when involved. As mentioned above, the nomination of respected and strong people at the head of the UN and US missions also signal that there is increased international will to support stabilisation efforts in the region.

Is this the Recipe that can Stabilise Violence in the Eastern DRC?

While the military success of a stronger coalition succeeded, and will succeed again, to overthrow militia groups that remain a serious threat to stability in the region, there are an estimated 30 to 40 armed groups that are still very active. Recent reports mention that M23 is recruiting again, and that local Mayi-Mayi Sheka and the Allied Democratic Forces (ADF) militias have multiplied their attacks on the population as they compete for resources and territory.[8]

Although government troops, in coordination with MONUSCO, have regained some legitimacy following the successful withdrawal of M23 for the first time since 1996, and villagers laid down fabric and palm fronds to celebrate

M23 troops receive training at Rumangabo military camp, in North Kivu, in preparation to face the United Nations force which now has the mandate to go on the offensive (27 April 2013).

Force intervention brigade troops arrive in Goma. The brigade has been deployed with a mandate within the MONUSCO to neutralise and disarm armed groups that threaten peace in the eastern DRC (28 May 2013).

the regular army's victory, the government's institutional structures remain weak and corrupt. Many of the militias and armed groups operating in the region also have close ties with the Congolese military and politicians.

Several essential points, which go beyond the problem of eliminating the local militias and rebel groups, remain to be addressed. The donor's policy needs to be taken to another level, and the Congolese government needs to take ownership of the stabilisation process. The donor's policy has been entrusted to ambassadors, who are limited in their ability to enforce conditions on financing: in order to maintain a positive relationship with the government, they must 'ignore' human rights abuses and government issues. Indeed, policies related to the DRC remain at the level of African bureaux in foreign ministries, which does not create the necessary environment for coordinated policies and accountability for the investments of foreign assistance. This is compounded by the government's insistence on non-interference in its internal affairs and its request for the reduction of external involvement. Yet, despite this absence of oversight, donors have continued to finance programmes

aimed at developing and strengthening the country's institutions, including its infrastructure, as well as supporting the decentralisation of the government's administration and stimulation programmes for economic growth.

For example, according to Stearns,[9] in 2009 donors contributed $220 million, while the DRC government contributed $5 million, to build administrative buildings, deploy more police forces and build roads. As in many other countries, buildings were erected, but then the funds for the functioning costs were not supplied; roads were built, but no provisions were made to maintain them, so they are already falling apart; and the police forces continue to be unpaid most of the time, and continue to harass the population to

THIS IS COMPOUNDED BY THE GOVERNMENT'S INSISTENCE ON NON-INTERFERENCE IN ITS INTERNAL AFFAIRS AND ITS REQUEST FOR THE REDUCTION OF EXTERNAL INVOLVEMENT

Congolese soldiers guard suspected M23 rebel fighters who surrendered in Chanzo village in the Rutshuru territory near the eastern town of Goma (5 November 2013).

generate revenue.[10] Civil servants deployed in remote rural areas, such as the eastern part of the country, are unprepared to meet the demands of a distrustful population tired of being abused. Although the defeat of M23 is due, in part, to the real engagement of the Congolese army, this remains corrupt, unaccountable and unsupported logistically and financially by the central government. From the perspective of the UN Security Council, there is also a tendency to assume too early that a country is in a post-conflict stage, while DRC combatants are still plaguing some parts of the country. Such a categorisation has serious implications, since the UN mission's mandates are modified with a focus on stabilisation rather than on active peacekeeping operations, transforming them into bureaucratic agencies unequipped to protect populations still suffering from the direct effects of conflicts.

Conclusion

While the muscular intervention that led to the ousting of a particular militia group is a success that must be acknowledged and praised, the too-rapid conclusion drawn by the media that peace has returned to the region is misleading and does not serve the population. Civilians are still harassed and suffer constant displacement, and this prevents any establishment of social, economic and political stability at the community level. As long as the basic government institutions in the DRC remain weak or non-existent, building a stable and secure society remains elusive. 🅰

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AMNESTY AT RISK: IS THE NIGER DELTA SLIDING BACK INTO INSTABILITY?

BY **DANIEL E. AGBIBOA**

Introduction

Since 1956, the Niger Delta has produced the oil wealth that forms the backbone of Nigeria's economy. Paradoxically, the region remains one of the least developed and least environmentally healthy regions in a country that is the seventh-largest oil producer in the world. Decades of oil exploration and exploitation in the Niger Delta have resulted in extensive pollution of the environment through incessant oil spills and gas flaring. This, in turn, has impacted disastrously on the sociophysical environment of the oil-bearing communities in the region, massively threatening the subsistent peasant economy and the environment and, hence, the entire livelihood and basic survival of over 31 million inhabitants. Years of neglect and conflict have fostered a siege mentality, specifically among the Niger Delta youth, who feel they are condemned to a future without hope and see armed conflict and criminality as a strategy to make their voices heard. Persistent conflict, while in part a response to appalling socio-economic conditions, has also entrenched it, serving as a consistent drag on the region's development performance writ large.

This article critically examines the current state of the 2009 amnesty programme that was initiated to halt the downward spiral into violence in the Niger Delta and ostensibly resolve the region's socio-economic challenges. The article argues that the amnesty scheme has failed to address the core underlying issues (for example, government corruption, the political sponsorship of violence and environmental degradation by oil multinational corporations) that continue to fuel hostilities and resistance in the Niger Delta. The recent heightened criminality in the Niger Delta suggests that the fragile peace established by the amnesty programme is now at risk, and the region seems to be sliding back into instability.

Conceptual Background

One of the major research findings in the conflict literature is that natural resources – especially those that are easily exploited – increase the likelihood and recurrence of conflict.[1] Two main lines of explanation have emerged: first, natural resources provide motivation and means for

Above: The Niger Delta produces Nigeria's oil wealth, which is the backbone of the economy, yet the region remains one of the least developed and least environmentally healthy.

NIGERIA

rebel uprisings. Second, abundant natural resources lead to poor policy choices and a weak state, exposing the society to violent conflict.[2] In addition, abundant resources provide easily accruable rents that can sustain political structures, such as corruption and nepotism, which would not persist without those resources.[3]

Theoretical explanations of the relationship between natural resources and civil conflict have typically followed two approaches. Theories of 'relative deprivation' link rebellion to atypical severe grievances arising from high levels of inequality, government repression and lack of political rights, or ethnic and religious divisions.[4] On the other hand, rationalist theories focus on the economic opportunities for rebellion that arise from availability of resources.[5] These models bear a semblance to Gary Becker's economic model of crime and law and draw heavily on Herschel Grossman and Jack Hirshleifer.[6] In these models, greed is the core motivation for rebellion, which is assumed to occur only when the transactional costs for rebels are low. There is now a consensus, however, that the greed-grievance dichotomy is unable to account adequately for the link between natural resources and civil war.[7]

The Niger Delta contains the key ingredients for a resource-based conflict, mainly because it accounts for the vast bulk of the nation's oil revenue, and its gas reserves are now touted as the next great potential source of revenue for the nation.

Post-1999 Protests in the Niger Delta

People in the Niger Delta seem to derive tactical inspiration from the violent activities of both the Nigerian state and oil multinational corporations (MNCs) in the region, and develop responses accordingly. In particular, the violence attendant with resource extraction in the Niger Delta by the alliance between state and oil MNCs has dialectically resulted in violence expressed as part of local resistance. While violence has been a recurrent feature of protests in the Niger Delta, its post-1999 form is certainly unprecedented in nature. A distinguishing characteristic has been the rise of ethnic militias claiming to represent the interests of the oil-bearing communities in their struggle for survival. These groups do not exist in isolation from the local context, but rather are deeply rooted in the internal contradictions of the Nigerian state and its political economy.

Crude oil spills from a pipeline in Dadabili, Niger State (2 April 2011).

Perhaps the most organised and formidable resistance group to have emerged from the Niger Delta is the Movement for the Emancipation of the Niger Delta (MEND). The group was initially formed to support the demand for the release of two prominent Ijaw leaders – Alhaji Mujahid Asari Dokubo and Diepreye Alamieyeseigha. However, its agenda later extended to political issues, such as resource control. The organisation has gained most attention internationally through its repeated threats to "cripple Nigerian oil exports".[8] As a way of accomplishing this, MEND threatened to cut Nigerian oil output by 30% and made genuine efforts to carry out this proposed sabotage. By July 2007, "700 000 barrels per day were shut down due to growing political instability and insurgent attacks."[9] According to the Report of the Technical Committee of the Niger Delta, released in 2008, the Nigerian government had lost a staggering $23.7 billion in oil revenue due to MEND attacks.[10] This underlined the clear need for a radical intervention by the state.

The Niger Delta Amnesty Programme

In April 2009, the idea of amnesty for repentant militants was first mooted by the late President Umaru Yar'Adua, in an urgent bid to curb relentless MEND assaults on oil facilities in Nigeria. According to Ndutimi Alaibe, national coordinator and chief accounting officer of the federal government's amnesty programme for Niger Delta ex-militants:

[T]he amnesty was a response by the then president to reduce fundamentally the escalation of violent conflicts that was taking place. After consultation with stakeholders, it was decided that there was a need to

get the militants to lay down their weapons. That was the basis of the amnesty which was meant to stabilize, consolidate and sustain the security conditions in the Niger Delta region, as a requisite for promoting economic development in the area.[11]

The amnesty was announced by President Yar'Adua on 25 June 2009. The terms stated that militants who freely surrendered their arms within the 60-day amnesty period (6 August to 4 October 2009) would not be prosecuted for the crimes that they had committed during the course of disrupting the Nigerian oil industry. President Yar'Adua made clear that the amnesty deal was aimed at reintegrating and rehabilitating militants willing to surrender their arms into Nigerian society.[12] In return for the acceptance of the amnesty, the federal government pledged its commitment to instituting programmes that would rehabilitate and reintegrate ex-militants under a disarmament (removing the weapons and destroying them), demobilisation (extinguishing ex-militants' belief in violence and providing them with a more powerful, peaceful alternative) and reintegration (aiding in the socio-economic process of becoming a civilian) (DDR) programme. However, according to Tiemiebi Korpamo-Agary, since there can be no progress without peace, the disarmament and subsequent reintegration of these militants is only a first step towards bringing urgently needed social development to the Niger Delta region.[13]

In July 2009, a budget of $145 million was controversially announced for the amnesty deal – applicable to 20 192 registered militants. Former combatants who registered

for the 42-month period of training, reintegration and rehabilitation in government-designated residential training centres received a monthly allowance of $410 over the same period. This amount was three times the average salary for a young public sector worker, but just a little higher than a foot soldier's wage – which stood at $310 in 2006.[14] However, the criteria used to establish eligibility for inclusion in the scheme was largely unclear, with the numbers of intended 'beneficiaries' widely believed to have been inflated.[15]

The amnesty saw over 15 000 militants surrender their weapons by the deadline date of the disarmament and demobilisation phase.[16] Weapons recovered during the disarmament process included 2 760 assorted guns, 287 445 rounds of different calibre ammunition, 18 gunboats, 763 dynamite sticks, 1 090 dynamite caps, 3 155 magazines and several other forms of military paraphernalia, such as dynamite cables, bulletproof jackets and jackknives.[17] Many militants turned themselves in, even though key militant groups such as MEND viewed the amnesty with suspicion – since it created less room for dialogue and did not address the core issues that had given rise to the struggles in the first place.[18]

The demobilisation phase commenced with putting militants into camps at temporary centres and providing support packages to cover their basic needs and those of their families (including food, clothes, shelter and medical services). This phase also involved non-killing and non-violence transformational training, ending with graduation and demobilisation. Joab-Peterside et al. notes that 23 358 ex-militants were successfully demobilised between June 2010 and December 2011.[19] The demobilisation phase officially ended on 24 September 2011. According to the Special Adviser on the Amnesty Programme, Kingsley Kuku, 15 434 people had participated in the training programme between June 2010 and May 2011.[20] The skills acquired from the training programme were meant to help the former combatants gain sustainable employment and income as well as reconcile with local communities (reintegration phase). According to a statement released on 11 December 2011, 7 556 ex-militants (at home and abroad) graduated from the programme. In addition, the Minister of Niger Delta Affairs stated that the ministry had organised a job fair, meant to link the youth in the amnesty programme with potential employers.[21]

Recapping the success of years past, on 11 April 2013, Kuku noted that over 13 000 ex-combatants had been deployed for local and foreign training, skills acquisition and other formal education, while more than 2 500 ex-combatants were admitted to higher institutions of learning in various spheres of knowledge.[22] Kuku announced that 4 608 ex-militants were undergoing skills acquisition in many other areas at the time, while 9 192 had graduated in various fields

Nigeria's former President Umaru Yar'Adua signing the amnesty deal in Abuja on 25 June 2009.

Weapons surrendered by former militants at an arms collection center at Tourist beach in the oil hub of Port Harcourt (3 October 2009).

including agriculture, automobile mechanics, welding and fabrication, entrepreneurship, carpentry, plumbing, oil drilling and marine-related courses, electrical installations, and information and communications technology, among others. Also, about 690 women had been placed in specialised skill centres at that time, while 174 ex-combatants had been offered direct employment in various government and private establishments.[23] According to figures in the new budget, Nigeria's federal government will spend $386 514 214 million on Niger Delta ex-militants in 2014. Out of this amount, $143.606 million will cover stipends and allowances for roughly 30 000 ex-militants – approximately half of the $292 700 640 million spent on ex-militants in 2012. In addition, a programme in 2014 for the reintegration of the ex-militants will cost the Nigerian treasury $213 427 550 million. Two years ago, the cost of the reintegration programme was $5 634 487 million. Statistically, in 2014 Nigeria will spend an estimated $12 154 on every ex-militant in the programme.[24]

Rising Criminality in Post-amnesty Niger Delta

Although the amnesty deal has led to a lull in violence in the Niger Delta and an increase in oil production since 2009 (especially since President Goodluck Jonathan – a native of the politically under-represented Niger Delta – assumed power in May 2010), the programme nevertheless affords only a cosmetic and *pro tempore* panacea to the protracted conflict in the region. Specifically, cash payouts to armed militants (the federal government has paid $40 million to four Niger Delta warlords to guard the country's oil pipelines) and

proposals to give oil-bearing communities a 10% stake in state oil revenues fail to address seriously the core underlying issues (such as corruption, violence and environmental degradation) that continue to fuel hostilities and resistance in the Niger Delta. Indeed, it would appear that what prompted the amnesty proposal was not the environmental tragedy unfolding in the Niger Delta, but rather the urgent need to stem the tide of crippling MEND attacks on oil facilities in Nigeria. These negatively affected the country's oil productivity and the profits of oil MNCs in the region. In short, the Nigerian state's prime concern in the management of the conflict has always been to maximise and protect oil revenues. As Alagoa Morris, an activist in the Environmental Rights Action and Friends of the Earth conservation group, argues:

> The underlying political priorities driving the amnesty process were narrower than comprehensive intentions would suggest. The emphasis seems to be more on the immediate objectives of disarmament and demobilisation to ensure uninterrupted flow of oil than on a sustainable reintegration process.[25]

Recent reports from the Nigerian National Petroleum Corp (NNPC) reveal that post-amnesty attacks on Nigerian oil pipelines have risen sharply. Shell estimates that more than 150 000 barrels of oil are being stolen daily.[26] In a May 2011 report, Human Rights Watch stated that despite the amnesty programme, some criminal groups and militants operating in the Niger Delta have carried out "kidnappings, bombings

and attacks on oil facilities".[27] The dangerous practice of oil bunkering (with scope for significant geographical expansion) has reportedly doubled since the amnesty, costing the government some $7 billion in lost revenue and another $5 billion for pipeline repairs annually.[28]

Reportedly, oil thieves steal roughly 20% (or some 400 000 barrels daily) of the nation's oil by way of oil bunkering.[29] The frequency of oil theft is confirmed by the fact that in November 2012, Shell – which produces approximately 40% of all Nigeria's oil – shut down a pipeline in the Niger Delta after a series of thefts on its Imo River trunk line. Shell claimed that sabotage was responsible for 25 of the 26 spills into the Imo River in 2012, which released the equivalent of nearly 3 000 barrels of oil both into the river and into other waterways, thereby contaminating large swathes of the local environment.[30]

IN SHORT, THE NIGERIAN STATE'S PRIME CONCERN IN THE MANAGEMENT OF THE CONFLICT HAS ALWAYS BEEN TO MAXIMISE AND PROTECT OIL REVENUES

Events over recent years illustrate the gravity of the issues at hand. On 5 September 2012, the city of Arepo (in Ogun State) witnessed pipeline vandalisation by suspected Ijaw youth hailing from the Niger Delta. Approximately 30 people were killed in the fire that broke out while the thieves were siphoning oil from the pipeline. The NNPC sent three engineers to mend the ruptured pipeline, all of whom were subsequently killed by the youth responsible for pilfering the oil.[31] After the line was finally fixed in early January 2013, criminals caused another explosion while tapping into the line. On 23 January 2013, another bunkering fire and gun battle was reported on the Arepo line. The Nigerian government was largely helpless in the face of the relentless vandalisation of pipelines, which posed a major threat to the fledgling amnesty scheme and to national security.

Piracy is also on the increase in the Niger Delta. On 16 January 2013, armed hijackers from the Niger Delta seized an oil tanker near Abidjan, stealing its 5 000 tons of oil.[32] In the first two weeks of February 2013, pirates attacked four vessels off Nigeria's coast and one in the Niger Delta region, killing four people and kidnapping eight.[33]

Oil bunkering and piracy aside, the spate of kidnappings involving both wealthy Nigerians and foreigners highlights the significant rise in criminality in the post-amnesty Niger Delta. On 10 December 2012, the wife of retired Brigadier General Oluwole Rotimi, a former Nigerian ambassador to the United States (2007–2009), was kidnapped in Ibadan, capital of the south-western Oyo State. Just under a week later, a Nigerian actress-turned-politician, Nkiru Sylvanus, was kidnapped by masked gunmen in broad daylight in the

south-eastern Imo State. On 17 December 2012, unknown armed assailants in Bayelsa State kidnapped four South Koreans and two Nigerians employed by a South Korean construction firm. In early January 2013, a senior executive of an energy marketing company was abducted in Port Harcourt in Rivers State. In the most high-profile kidnapping, Kamene Okonjo, the mother of Finance Minister Ngozi Okonjo-Iweala, was abducted from her home in Delta State on 9 December 2012. During raids to find Okonjo, government soldiers arrested 63 people, including two policemen.[34] While the jury is still out on whether Niger Delta militants are directly connected to these kidnappings, the matter nonetheless demonstrates the growing instability of a region in which security and political officials are complicit in energy-related criminal activity – whether in alliance with administrators in Abuja, rebels in the Delta region, or both.

Conclusion

This article has critically examined the impact of the 2009 amnesty programme, which was ostensibly initiated to halt the Niger Delta's downward spiral into violence and resolve the region's socio-economic challenges. The recent increase in criminality in the Niger Delta suggests that the fragile peace established by the amnesty programme is now at risk, and the region seems to be sliding back into instability. At the same time, the inhabitants of the Niger Delta continue to voice their concerns regarding the issues that stem from the environmental damage perpetrated by oil MNCs. It is most likely that their discontent will continue to brew, especially if efforts by Shell and the Nigerian government to clean up the degraded Niger Delta ecosystem and to facilitate gainful employment are further delayed. Ⓐ

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