

# GUARDING THE GUARDIANS

PARLIAMENTARY OVERSIGHT AND  
CIVIL-MILITARY RELATIONS: THE CHALLENGES FOR SADC



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# FOREWORD

The title of this book, 'Guarding the Guardians', is derived from the famous aphorism of the Latin poet Juvenal: *quis custodiet ipsos custodies?*\* Africa faces numerous political, economic, developmental and social challenges, as is evidenced by the many conflicts on the continent, the unacceptable conditions of poverty, sanitation and health, as well as the low levels of human development and education. Today, at the start of the new millennium, great effort is being made to address and reverse this condition and to allow Africa and her people to find their rightful place in the sun. The New Partnership for Africa's Development (NEPAD) is at the forefront of such efforts. It is a pledge by African leaders, based on a common vision and a firm and shared conviction that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development, and at the same time to participate actively in the world economy and body politic. The programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.

The NEPAD document further argues that peace, security, democracy, good governance, human rights and sound economic management are preconditions for sustainable development. The leaders of Africa are making a pledge to work both individually and collectively to promote these principles in their countries, regions and on the continent.

One of the sectors of governance that is essential in enhancing peace and security and that equally needs to be subjected to good governance is the defence sector. This sector includes military forces, defence departments and ministries, the legislature and the executive, other national departments to the extent that they interact with defence, sub-regional, regional and international defence and security organisations, paramilitary forces and civil society organisations involved in the defence debate. To ensure positive change aligned with the democratisation of sub-Saharan Africa, it is essential that the defence sector of the region also be fundamentally transformed.

Transformation of the defence sector should address three fundamental issues. These are the establishment of a collaborative defence community, inculcation of democratic civil-military relations and ensuring efficient defence management. A collaborative defence approach and posture leads to sub-regional and regional confidence and security building, which contributes to conflict prevention and national and regional security. Democratic civil-military relations also contribute to confidence building through

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\* Quoted from L Nathan, *The changing of the guard: Armed forces and defence policy in a democratic South Africa*, Human Sciences Research Council, Pretoria, 1994, p 60.

transparency, accountability and civil control in defence management. Good civil–military relations furthermore enhance the ability of governments to prioritise between developmental and security needs. Efficiency in defence management ensures that defence activities are aligned with policy and that defence expenditure is maintained at the absolutely essential level to ensure effective defence, therefore releasing scarce resources needed for developmental and social requirements.

To contribute towards the mission of the Institute for Security Studies (ISS) to conceptualise, inform and enhance the security debate in Africa with a focus on human security, the ISS has recently launched a Defence Sector Programme (DSP). The DSP is wholly funded by the United Kingdom Department for International Development (DFID). The object of the Programme is to strengthen democracy and good governance of the defence sector in Africa and thereby to contribute to human security and development.

In support of this goal the DSP organised and conducted a civil–military relations conference involving members of the legislatures of South Africa, Tanzania and Zambia. The conference was conducted from 8–11 July 2003 in Arusha, Tanzania and was entitled, 'Parliamentary oversight and civil-military relations: The challenges for SADC'. The conference involved 31 participants from members of the Parliamentary Portfolio Committee on Defence in South Africa, the Parliamentary sub-committee on Defence and Security in Tanzania and the Parliamentary Committee on National Security and Foreign Affairs in Zambia. Other participants were members of the East African Legislative Assembly, academics from Dar-es-Salaam University in Tanzania and the University of Zambia as well as researchers from the ISS.

The aim of the conference was to facilitate discussion and the exchange of ideas and experiences on parliamentary oversight of the military between the defence and security committees of the parliaments of the three countries. More particularly the conference sought to enhance the understanding and insight of members of parliament on the subject of parliamentary oversight over defence and civil–military relations, to enhance the capacity of parliamentarians to exercise control and oversight of the defence sector and to support the ISS objective of enhancing and informing the security debate in Africa.

During the course of the conference a number of papers were presented and critical issues regarding parliamentary oversight over defence and security agencies were discussed. During the opening, the Hon. Abdulrahman Kinana, Speaker of the East African Legislative Assembly, called on the participants to develop the capacity to analyse, monitor and provide an input into the defence expenditure of their respective countries, thereby avoiding abuse and misappropriation. This would contribute to a defence sector that is more efficient and accountable.

It was generally agreed that whereas parliamentarians do play a role in domestic policy development within their respective countries, their role in the

development of collaborative security and the enhancement of sub-regional and regional organisations was still unclear. Parliamentarians should discuss this issue at the Southern African Development Community (SADC) Parliamentary Forum.

Although it is clear that parliamentarians have the responsibility to curtail the powers of the executive, including that of the president, they should also respect the separation of powers between the legislative and the executive authorities. This presents the problem to find the correct balance between oversight and 'micro management' by parliamentary committees. Parliamentary oversight includes the approval of defence policy, the approval of defence legislation, the annual approval of the defence plan, programmes and budget and the approval of the employment of the defence force. The question, however, arises as to how far oversight goes in the actual monitoring of the execution of the plans, programmes and operations as well as in oversight of expenditure. This differs between countries and should be regulated by their respective constitutions and defence legislation.

Parliamentary oversight and healthy democratic civil–military relations need not imply adversarial relations but should rather be based on mutual trust and respect, shared responsibility and a partnership in the defence and security of the country. This is greatly enhanced by education in civil–military relations within the defence establishment on the one hand, and by building an understanding of defence matters and of the peculiar characteristics of defence forces within the parliamentary committees on the other. Healthy civil–military relations are enhanced where oversight and control are balanced by the acceptance of responsibility for defence by the political masters. The South African White Paper on Defence provides a good example by spelling out the responsibilities of the South African government towards the defence force and its soldiers.

The issues related to civil–military relations and parliamentary oversight are complex and require that unique answers be found for the diverse realities of different countries and regions. In particular more research is needed to find an African model to suit African realities. Despite this, civil–military relations in the region can be greatly enhanced through interactions among parliamentarians of the different countries as well as between them, the military and broader civil society. It is the hope of the editors that this book will contribute towards that quest.

In his closing address, the Hon. Willibrod Peter Slaa, member of the SADC Parliamentary Forum, emphasised the need to broaden the security debate to include the important concept of human security, the complexity of the issues of the security debate in the region and the fact that there was not one single model on oversight that could address all situations. He stressed the need for African solutions to African realities and encouraged participants to continue with the dialogue on these issues.

The DSP staff would like to express their thanks to all who participated in the conference and who made this book possible. We acknowledge with gratitude the contributions of the Hon. Abdulrahaman Kinana, Speaker of the East African Legislative Assembly who opened the conference and the Hon. Willibrod Peter Slaa, member of the SADC Parliamentary Forum, who closed the conference on behalf of the Secretary-General of the Forum. Special thanks also go to the three Chairs of the respective parliamentary committees, the Hon. Thandi Ruth Modise, Henry Mtonga and John Samuel Malecela as well as to all the contributors of the papers published in this book. Finally our thanks go to the programme donor, the DFID, without whose contribution the conference and the book would not have been possible.

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# AN AFRICAN PERSPECTIVE OF THE REFORM OF THE SECURITY SECTOR SINCE THE 1990s

Martin Rupiya

## Introduction

Notions of arms control and disarmament ideologically inform the concept of Security Sector Reform (SSR), as currently popularised.<sup>1</sup> In practice, however, the initiative's implementation in the targeted countries, mainly in the developed world, has resulted in different responses. In the former East European states acceptance has been positive, partly because many of those states are desirous to be fully incorporated into the Western political and economic realms. Meanwhile in Africa, the SSR initiative since the 1990s has received mixed reaction, with a significant number spurning the overtures. Again part of the explanation lies in its initial impact that tended to weaken states and ignored the realities of genuine insecurity, leading in extreme cases to some countries collapsing as political entities. Somalia, Burundi, Liberia and the Democratic Republic of Congo (DRC) are concrete examples of this phenomenon.

The challenge facing practitioners and policy makers on this question is: How can we come up with policies and strategies that will forge common ground between the two poles? In our view, Africa does not necessarily wish to challenge the status quo in the international security system but states on the continent are not about to support their own deconstruction through the template of the existing SSR mechanism. Given the differences in the reception of the SSR initiative as evidenced above, there is a need to come up with an alternative that is acceptable to the former. On the African continent, the alternative clearly needs to address the major failing of spawning insecurity both of the state and individuals. This must lie in an appropriately structured force that is adequately resourced to support emerging political democracies. Stated differently, there is a need for an SSR initiative that is unique and specific to African conditions, whose *raison d'être* arises from different motivations in comparison with that of the West.

Two conferences both focusing on the theme of SSR in the developing world were held during the first quarter of 2003. In retrospect it is now evident that both conferences represented the re-launch of the *third phase* of the SSR

initiative, focused exclusively on the developing world. The first conference, entitled 'Security Sector Reform (SSR) – Moving the agenda forward: Global facilitation network for SSR', was held in London from 24–25 March 2003 and was funded by the United Kingdom's Department for International Development (DFID). Dominant among the audience and presenters were colleagues from the defence and security community among whom were military practitioners, defence analysts as well as policy makers directly responsible for the executive function as well as the civilian oversight of the armed forces.<sup>2</sup>

The second meeting was held the following month (11–12 April 2003) in Oslo and was entitled 'Coherence, cooperation and comparative strength: Conference on justice and SSR'. This was hosted by the Governance Office<sup>3</sup> based in New York, falling under the United Nations Development Programme (UNDP). The majority of the participants in Norway were UNDP country representatives drawn from the 166 countries in which the organisation is represented. Academics from the development field made up the rest, with the odd defence and security practitioner and policy maker. Although both conferences dealt with SSR, the emphasis in London was on 'moving the agenda forward' while in Oslo, the focus was on maximising the 'comparative strength' of the widely dispersed UNDP offices that, as a matter of procedure, work closely with governments generally in the developed world. The different emphases being expressed in London and Oslo also revealed frustration at the admitted failure of previous attempts; hence the upfront declarations of 'moving the agenda forward' or 'relying on comparative advantage to make a more significant impact'. More importantly, however, this was not to be through joining the DFID and UNDP's forces but operating as different entities. In practice, where their efforts converged this would merely be incidental.

It is also important to assess the significance of the composition of the audience dominant at each conference. On the one hand, in the realm of SSR, the defence and security community that gathered in London had traditionally held the monopoly on doctrine, policy and strategic influence on the subject but had begun to concede space to other 'civilian' input as well as restructuring aspects of the security sector to fit in with the emerging democratic dispensation. It can be argued that the defence and security community is likely to surrender only the barest minimum as it seeks to retain cherished control of the defence and security apparatus.

Meanwhile the development community – long immersed in socio-economic issues – recently realised that their efforts have been wasted through internecine and protracted conflict and that the time had come to delve into the murky world of conflict resolution as a precondition for development initiatives. For the latter congregation, the discovery that it is imperative to achieve sustainable cease-fires and peace before any meaningful development

can take root, is a recent phenomenon but one which is likely to continue and expand in the immediate future. As a consequence of this realisation the development community, through the conference in Oslo, is seriously investigating the possibilities of how it can intervene and engage conflict players around the issues related to SSR.

However, we need to be reminded that their participation is only a precondition or a stepping stone to their traditionally cherished goal – development initiatives. Stated differently, the UNDP views SSR as a hindrance and not as a priority *vis-à-vis* their main mission. It is therefore clear that each interest group is conceding or expanding its interests, as the case may be, while still retaining their core functions. Based on these perceived intellectual concessions from both the defence and security *versus* development colleagues, further areas of synergy need to be identified as well as a more serious move made towards collaboration when it comes to SSR and what (should) work on the African continent.

Finally, yet another difference lay in the UNDP conference title that sought to broaden SSR beyond the traditional security sector and to include the restructuring of the jurisdiction as well as the penal system. This may have been implicit (but was certainly not explicit) in the DFID theme.

The above assessment of differences in themes, audiences, expectations as well as *separate* main motivators presents us with a common denominator perspective that should guide our expectations of the involvement of both the DFID and the UNDP in SSR. In other words, the DFID programme is a New Labour Party interest initiative that may or may not survive the change of government in the UK. On the other hand, the UNDP does not have resources of its own and depends on convincing those countries with resources to commit their own funds in order to support nations requiring assistance. Aspects of SSR, for example demobilisation, are expensive and require huge amounts of financial and other support that is generally beyond the capacity of most developing nations.

Lacking in both conferences was the intellectual history and motivation by the West for SSR targeted at the developing world. In the case of Africa, the Oslo papers did make a low-key connection between renewed SSR and arms control as well as disarmament, although even here the literature failed to highlight that this is the centerpiece for Western involvement.<sup>4</sup>

Given these ongoing efforts and the appearance of a blissful African audience at both conferences, it is imperative that the underlying dynamics and seeming intellectual sleight of hand shrouding the current SSR initiative be sufficiently contextualised and highlighted. In other words, we need to establish whether there is an African perspective on the global initiative requiring developing nations to reform their security sectors. If such a perspective exists (as this paper argues), why is this so and, more significantly, what are the implications for SSR on the African continent? Before proceeding

with attempts to address the above questions, we need to define what security sector reform means?

### **Definition of SSR as presently constructed**

The Western idea of SSR emanates from the liberal democratic philosophy that champions market economies and related social arrangements. When it is suggested for implementation in the developing nations, it bears the hallmarks of post-1945 ideas of arms control and disarmament. The idea at present is therefore an attempt to fit developing nations within the hierarchy of a world dominated by the 'victorious' West. More generally, reforming the security sector is basically part of a process designed to fit the bureaucracy within states, especially those structures that have/had the role of exercising monopoly of violence on behalf of 'one-party states' or such like, in line with the new liberal democratic dispensation – and subordinated to the existing international security system.

While there is no standard definition that exists to define the special nature of reforming the category of government departments responsible for intelligence, policing, military activity, paramilitary functions and upholding the customs and penal systems, the very act of targeting these entities challenges the sensitive questions of national security, sovereignty, state-regime security as well as the human security of political entities.<sup>5</sup> The reform initiative is designed to alter power relations amongst competing elements for the control of the armed forces, between nationals located in the executive, the legislature, institutions and civil society groups. This can also manifest itself at yet another level of regional alliances and coalitions in the international security system. In effecting SSR, there are losers and winners, making it obvious that those affected are likely to resist change while others acquiesce only in order to maximise their own positions. As a result, the SSR initiative is perceived as 'violating' hitherto hallowed ground.

In practice, a useful definition of the present trend of SSR can best be gleaned through an analogy relating to similar events between the Allies and the defeated Axis powers soon after the end of the Second World War in 1945. At that time, the 'victorious West' was conscious of lost opportunities when it had failed as a group to follow through on the triumph of the First World War, epitomised by the 1923 Treaty of Versailles. Soon after tipping the balance of forces in favour of the Allies in Europe in 1917, America after the end of the war in 1918 went into political isolationism. This left a power vacuum in war-weary and devastated Europe in which belligerent European countries failed to find accommodation.

The result was inter-war rivalry between the former Allied European powers in a process that provided an opportunity for the rise of the German Social Nationalist Party (Nazi) under Adolf Hitler during the late 1920s and early

1930s. This laid the foundations for the Second World War. After August 1945 the Allies moved with speed, battering down the hatches of managing the post-war peace environment through Arms Control and Disarmament. This culminated in the systematic political deconstruction of the German *Furher* and Japanese Emperor's offices, as well as the physical occupation of the two territories. This practice has continued to this day, representing the most successful case studies of the reform of the security sector the world has ever seen.

Given the 'victory against communism' in December 1991 a similar SSR, as briefly reviewed above, was launched. This was now aimed at removing the residual armaments capacity still located in the developing world. The ultimate purpose was to subordinate the former Eastern bloc and developing nations' militaries within the hierarchy of the international security system through the regimes of Arms Control and Disarmament, which is dominated by the West.

Owing to the underlying objectives of arms control and disarmament, the initiative has received mixed reaction in the targeted client states. In this discussion, the former Eastern Europe and Africa have each responded differently to the challenge. More generally, in former Eastern Europe where communist political structures collapsed, the new political elites and their majority peoples, anxious to become part of the European Union, appear to have embraced with little inquiry, far-reaching reforms of the security sector.

In Africa, however, Cold War alliances were based on strong nationalistic undercurrents that have now sought to reassert themselves as independent and sovereign governments. As independent entities, many African governments balked at the prospect of arms control and disarmament by the West through the notion of 'reforming the security sector and enjoying the peace dividend' during the initial suggestion made in 1989, as we shall see.

The history of African militaries and political elites has, however, not necessarily endeared itself with its citizenry. At the precise period of the end of the Cold War, ethnic and protracted conflict ravaged African states. The Robert Gersony Report commissioned by the US State Department documented horrendous atrocities in Mozambique, and the plight of ordinary people in Somalia reached epidemic proportions at the hands of armed factions. In 1991, the US launched an innovative UN International Task Force to try and reign in marauding rebel groups and warlords as a precondition for the deployment of a full UN Peacekeeping Mission. However, by 1993, after more than 14 US Special Forces were killed and their bodies unceremoniously dragged through the streets of Mogadishu, the US and other influential UN Security Council members lost the appetite to keep the peace on the African continent. Protracted civil strife also ravaged Angola in 1992 and 1994 even after the withdrawal of Cold War warriors that had helped to prop up both sides in the conflict. A similar fashion of unremitting conflict engulfed Burundi in 1993 and later reached genocide proportions in which over 800,000 people lost their lives

in Rwanda in 1994. As the massacres broke out, a limited UN contingent was instructed to withdraw, overwhelmed by the intensity of the unfolding drama. Conflict also engulfed the then Zaire (now DRC) in 1996, 1998 and 1999 resulting in casualties of over three million people, largely from the effects of the war. Finally, protracted conflict destroyed the shaky political edifices in Liberia and Sierra Leone at this time.

Against the deteriorating security situation on the African continent and the general withdrawal of the North led by the US, models of force restructuring were suggested. These were the now infamous African Crisis Response Initiative (ACRI) by the US; the Reinforcement of African Military Capacity (RECAMP) by France; and the more mundane Wider Peacekeeping by the UK. Again these did not find ready reception and also struggled against former colonial regional influence.

The important point to take away here, was the acknowledgement by the international community of the desperate security plight of African people and the lack of capacity of the continent's armies.

The end of the Cold War had resulted in the increased vulnerability of African regimes and peoples. As discussed below, this is precisely the point at which the Bretton Woods institutions suggested an across-the-board, prescriptive reform of the security sector whose emphasis was on downsizing and speedy demobilisation, as witnessed in Uganda and Mozambique.

On the one hand, the desperate situation reflected the need to have properly and adequately equipped forces to provide state and individual security of citizens. On the other hand, however, large and unproductive militaries acting as predators on the hapless population resulted in calls for disarmament and force reduction. Clearly, some sort of middle of the road equilibrium was/is required for an SSR process that will enjoy the support of locals given the conflict conditions on the African continent. Despite the failure of the secondary security intervention mechanism by the reluctant North, which also constitutes the permanent members of the UN Security Council, the plight of Africans has continued to be of major concern. Herein lies the challenge of coming up with an adequate rationale that resonates with and responds to the subjective and objective African conditions and that will result in the implementation of SSR that enjoys majority support.

This paper argues that SSR as presently constructed by the North fails to take into account sufficiently the concerns of African peoples. The current SSR initiative is preoccupied with fitting developing nations into the hierarchy of the existing international security system. In practice, this has been, we think quite rightly, resisted by the majority of African governments. The challenge for both the North and Africa is in coming up with a SSR process that allows African democratic states to strengthen national, regime and human security, without necessarily challenging the West in the highly contested international security system.<sup>6</sup>

## **The evolution of post-Cold War SSR in Africa**

### *Phase One: 1989–95*

As the defeat of communism appeared imminent during the late 1980s, considerations regarding the management of post-Cold War relations dominated. Washington and its allies sought an entry point aimed at effecting Arms Control and Disarmament within the developing world now that Moscow was in full retreat. Security interests were at the forefront of Washington's thinking in 1986 when it manoeuvred for the Bretton Woods institutions; the World Bank and the International Monetary Fund (IMF) pipped the UNDP in the struggle for the global agency to lead the post-Cold War economic management and restructuring. Both were also already instrumental in providing significant financial support to the developing world and needed to retain influence with their clients.

In a report entitled 'Voices of the poor', the World Bank provided the 'factual' underpinnings to this argument portraying military expenditure in the developing world as "excessive, unproductive and wasteful". In coming to this conclusion, the report had interviewed 20,000 sampled representative individuals from 200 communities in 23 countries. The majority of the respondents had "expressed the desire that security was top of their priority list", in a sense demonstrating the widespread insecurity that followed the departure of the Cold War. "Bloated security sectors were seen as impeding development and [were] cast as blights to achieving poverty reduction".<sup>7</sup> Within two days in September 1989, World Bank President Barber B. Conable and IMF Director Michel Camdessus addressed press conferences where they put forward the case for a radical "capping of military expenditure in the developing nations".<sup>8</sup>

In their presentations, both argued that military expenditure had reached alarming levels (over 800% by 1997) and needed curbing. In parallel with the withdrawal of financial support from the Banks, it was argued that they needed to target decision-making nodes within the political systems of client states in a comprehensive reform of the security sector. This political act or challenge by the international financial institutions was to constitute the thin edge of the wedge that would create tension and suspicion with governments in the developing world.

The suggested unilateral capping was pegged at the previous year's (1998) military expenditure that stood at 4.5% of gross domestic product (GDP). The UNDP – marginalised in the role of post-Cold War global economic management – suggested an even more radical capping of only 4%. Much later, in the case of Africa, the UN secretary-general suggested no more than 1.5%, followed by a 10-year moratorium.<sup>9</sup>

Taking this 'global leadership role' of the IMF, World Bank and the UNDP in criticising the developing world and especially African governments' military

expenditure, the donor community took its cue and started demanding reductions as a precondition for bilateral and multilateral funding. Consequently, reform of the security sector under this notion has been characterised by blanket downsizing. But what was the African response to this initiative emanating from the North?

Most African states were caught between a rock and a hard place. Over 30 countries on the African continent had economies qualifying them as amongst the poorest in the world and therefore needed budgetary and development financial support from the donor community led by the IMF and the World Bank. The option of openly challenging the SSR initiative therefore appeared suicidal, notwithstanding the deep disagreement that the African governments had with the prescriptive suggestions. The responses were therefore muted or shown by the failure of the programmes; despite a deceptive decline of expenditure of about 25%, later discovered to be attributable to the withdrawal and end of conflicts in South Africa, Mozambique and partly in Angola.<sup>10</sup>

A tabulation of the factors reflecting this situation after the launch of the first phase included the following:

- It was clear that the World Bank and IMF's series of demobilisation exercises were designed only for the short-term and did not take into account the long-term nature of successfully reintegrating combatants into civil society. The limited resources allocated were also a point of concern. Furthermore, the rushed demobilisation and integration of former factions that had been at each other's throats failed to take into account the realities of raising armed factions, characterised by regional and ethnic as well as personalised leaderships – a phenomenon that needed to be weeded out in time before armed groups could attain 'the national status and ethos'.
- The SSR initiative was prescriptive and its 'one-size-fits-all' approach soon revealed serious flaws in understanding genuine security demands of states and peoples. In practice, several communities were left without a central government.
- In Mozambique (following implementation of the 1992 Rome Treaty) and elsewhere, private security emerged as better equipped compared to central government, raising the idea of the privatisation of security and the increased vulnerability of incumbent regimes.
- African governments, desirous of keeping lines of financial aid flowing from the West, reacted by removing military expenditure figures from public scrutiny.
- Finally, a rapid and unforeseen escalation of protracted conflict, violence and genocide characterised by severely weakened or collapsed states – measured in more than 19 major conflicts – presented a difficult environment on the African landscape for successful SSR.

Available evidence reveals that by the mid-1990s, the North was convinced that

the SSR initiative on the African continent had failed and required a new push. The nature of this new push, which constituted the second phase, was, however, to differ in approach between the US and its European counterparts.

### *Phase Two: 1999–2003*

Aware of the reluctance of African governments to conform, the US adopted the route of legislation in Congress that had implications for officials in the World Bank and IMF to 'enforce' in the developing nations that which would result in SSR by default.<sup>11</sup> According to this reasoning, the US Congress in 1996 began debating a bill whose provisions would require developing nations seeking support from the World Bank and IMF to submit their defence expenditure figures. This came into effect in 1999. In the interim period, officials from these institutions had been positioning themselves to implement the bill's provisions once it became law. In 1999, given the involvement of Zimbabwe and other Southern African Development Community (SADC) countries in the conflict in the DRC, Bretton Woods officials demanded that Harare submit its defence expenditure figures in the Congo. Not surprisingly, the government in Harare was amazed at this request and initially refused to entertain the demands. Later, it appeared that the Zimbabwean government had been persuaded to provide some answers and submitted that its military expenditure was being paid for by Angola. This was, of course, received with some scepticism but was not too dissimilar to what other African governments had done under the same penetrating questioning by international organisations representing the North. On this score, it is safe to conclude that the US now relies on the leverage of its domestic laws as they relate to the work of the Bretton Woods institutions – in which the World Bank is always under the directorship of a US national and Europe appoints the head of the IMF.

Meanwhile, Europe, with many of its members linked to Africa as a result of former imperial connections, decided to continue engaging with the continent but with a similar objective as the US – namely, SSR aimed at fitting the continent within the nuanced international security system. In the search for an alternative to the failed first phase, several meetings were held in The Hague, Tokyo, Berlin and Paris, at which the theme was 'Military expenditure in the developing world', and how to deal with this dominated the discussions. It was at this time that amongst the Europeans, the British government, under New Labour, decided to launch a separate but more dedicated initiative. This was designed to encourage developing nations' growth and stability with the programme supervised by the DFID, led by Clare Short. With the new British initiative on board, it was again decided to launch a second phase of SSR especially in Africa that would focus on public sector management training, including the security sector.

The second phase began with a conference held in Ottawa in 1997, organised

by the European Organisation of Economic Cooperation and Development (OECD), now emphasising “sound financial management principles” and focusing on civil service retraining. This development was almost a replaying of the McNamara Systems Analysis and Public Sector – especially defence sector – restructuring seen in the US during the late 1960s. A secondary factor and criterion of ‘good governance’ was added to the ‘technical’ approach suggested by OECD.

Three years after the launch of the second phase in 1999, available military expenditure figures reflected that the initiative had also failed. Military expenditure in Africa had initially dipped during the early 1990s as a result of the withdrawal of the big spenders – South Africa and Angola. However, after the failed elections of 1992 in Angola and the increase in conflicts, military expenditure by 1996 stood at a high 22%.<sup>12</sup>

While in our view the programme still held on to the same objectives expressed in 1989–90, the slight difference was to depart from the ‘one-size-fits-all’ approach and to seek to work closely with the different governments on the continent.

Failure of the attempts in the second phase included some of the reasons elaborately cited in phase one, but the most important was the persistence of internecine strife, even in countries previously perceived as politically stable, such as the Ivory Coast. A return to the drawing board then culminated in the launch of the two conferences in London and Oslo at the beginning of 2003, referred to earlier. A further qualification during this period was declining interest in African affairs as a result of international attention being focused on the war on terrorism, in which the continent plays a peripheral and marginal role. A number of important elements also reflected the flaws of the SSR initiative during the second phase. These included:

- a general absence of a rationally thought-out defence policy among many African states;
- the absence of expertise for managing the defence sector outside the armed and uniformed forces;
- the absence of public dialogue in many of the states on the defence and security issues; and
- the impact of 9/11 and terrorism, which has diverted attention away from African issues.

### **African perspective of reforming the security sector**

The African perspective on the reform of the security sector since the 1990s has been shaped by bitter experience. The end of the Cold War raised expectations of a peace dividend throughout the world. However, events on the African continent in the 1990s provided a scenario of conflict never before experienced. The conflict in Somalia degenerated, smashing the remains of General Siad

Barre's government on the horns of competing warlords and religious differences. During 1991, the US launched the UN International Task Force on humanitarian grounds but was forced to abandon the operation in Africa two years later when troops from the elite airborne division were captured, executed and dragged through the dusty streets of Mogadishu for the entire world to see. With the operation initially timed as a preliminary phase to long-term UN peacekeeping involvement, these events drastically curbed the presence of this international body on the continent. The protracted conflicts in Angola, Mozambique and the Sudan acquired a new intensity despite the removal of the Cold War umbrella from 1992. In Rwanda, Burundi and Uganda, ethnic-based conflicts erupted with such force that Africa witnessed a horrendous genocide in Kigali which left over 800,000 people dead with the UN unable to intervene.<sup>13</sup> In 1996, Africa's third largest country, the then Zaire (DRC) became host to the spill-over effects of civil wars being fought in neighbouring states. It was further destabilised by the competing mainly multinational mining companies whose operations had been disrupted in the chaos that ensued; and was subjected to intense conflict waged by armed factions within the country itself. Again the UN was unable to provide support to the mounting refugees, internally displaced peoples (IDPs) and millions of casualties made up of mainly women and children in the Congo. While the UN was conspicuous in its failure to have a presence on the African continent, the continental body, the Organisation of African Unity (OAU), also demonstrated a serious lack of capacity.

During the last decade over 19 major conflicts took place on the African continent, with 21 of the UN's 24 missions being hosted there. Clearly, the removal of the Cold War umbrella had worked against the majority of peoples on the African continent who now needed strong central governments supported by appropriately raised, funded and legalised forces to provide minimum public safety.

It was against this background that the World Bank and the IMF launched the first phase of SSR in 1989–90, as discussed.

Security sector institutions established during the colonial era had been for the purposes of perpetuating imperialism and needed to be restructured philosophically and ideologically in order to "remove the noxious reputation of modern Africa – characterised by coercion and violence directed against subject populations".<sup>14</sup> During the contested period of the Cold War, some African political elites did not materially restructure these forces, continuing to depend on military aid from former colonial powers.

As Odoche correctly points out:

"[t]here is little to indicate that African leaders [in the newly independent states] attempted to understand or define security beyond what was bequeathed to them by the colonialists."<sup>15</sup>

Den Hank continues: “Not surprisingly, ordinary African citizens came to equate the term ‘security’ with purveyors of terror and coercion.”<sup>16</sup> This frame of mind in ordinary Africans regarding the security establishment needs to be factored in when we talk about reforming this sector. Rapacious militaries were most evident in West, Central and North Africa while Southern Africa tended to be split between nationalists and those electing to sign friendship treaties with Russia.

Following the end of the Cold War, when nationals in many countries were expecting at last to enjoy some relief from the militarism that had characterised international relations since 1945, African countries found themselves in the throes of fratricidal ethnic and inter-state conflicts. In the single decade of the 1990s, protracted wars and genocide occurred in Liberia, Sierra Leone, Rwanda, Burundi, the Sudan, Somalia, Angola, Mozambique and Zaire (DRC), with casualties estimated in the millions. Africa found herself with the highest refugee and IDP population in the world. The clear message was general insecurity. Instead of enjoying the much hoped for ‘peace dividend’, Africa experienced the unique phenomenon of collapsed states, weak states and was host to increasing UN peace missions. As a result of inadequate security, nationals were left at the mercy of warlords, armed factions and precariously positioned governments in the Congo, Sudan, Rwanda, Burundi, Mozambique, Liberia, Sierra Leone and Angola – to name but a few of the areas affected. Furthermore, following the peacekeeping debacle in Somalia in 1993 and the genocide in Rwanda in early 1994, the ‘victorious West’ and the UN Security Council decided to withdraw its robust engagement from Africa. Populations, as recently evidenced in Liberia, were left vulnerable to armed gangs and so-called rebel groups.

It is against this background that the sentiment has emerged that Africa needs adequately equipped and properly legalised armed forces to safeguard basic human security. Existing armed factions – raised by individuals and consequently owing their allegiance to these characters – are not representative of ‘national forces’.

The continent desperately needs the establishment of basic and standard security structures that are designed to foster confidence to nationals without necessarily threatening Western dominance of the international security system. This aspiration is not evident in the policy orientations viewed above in phases one and two of the evolution of SSR since 1989.

## **Conclusion**

SSR is a phenomenon that has different departure points for the West versus Africa. While the Western desire is to locate the continent within the nuanced international security system, African governments have opted to operate, as best they can, outside this regime. However, even as this by-play is evolving,

Africa needs serious SSR that provides its ordinary people and regimes with adequate security and stability. The challenge that faces us is how this intellectual gap can be overcome in order to arrive at a common objective without emasculating or empowering one side in the process.

## Notes

- 1 The concept of 'arms control' refers to the control or maintenance of armaments within agreed limits. This includes disarmament – also known as the reduction or abolition of certain lines of weaponry that may be unilateral or multilateral, general or local, comprehensive or partial, controlled or uncontrolled. Arms Control and Disarmament agencies have been established by the UN as mechanisms for the international management of agreed to restrictions.
- 2 The latter also included retired politicians and aspirants.
- 3 Prof. Georges Nzongola-Ntalaja, Director, Oslo Governance Centre, UNDP.
- 4 Security Council/6522/Rev.1: SC Establishes ad-hoc Working Group to Review Secretary-General's Recommendations on Maintenance of International Peace and Security in Africa, 28 May 1998 in collaboration or 'mindful' of the Organisation of African Unity, 1993 Cairo Declaration. The primary purpose of this declaration was conflict prevention, management and resolution of conflicts on the continent. This followed submissions of the Peace and Security Report, 1998, On Causes of Conflict and Promotion of Durable Peace, A/52/871-S/1998/318.
- 5 See comments by Timothy Edwards in Security Sector Reform – Concepts and Implementation: Report for the Geneva Centre for Democratic Control of Armed Forces, p 1.
- 6 Examples of Libya, Iran and Korea, hastening to subject themselves to 'complete and unfettered international military inspection' is a development that must sober-up and guide other aspiring African states in future.
- 7 At <<http://www.worldbank.org/poverty/voices>> (22 June 2003).
- 8 Both speeches made in Washington on 26 and 28 September, respectively.
- 9 See, *UN Agenda for the Development of Africa in the 1990s*, (UN-NADAF), 46/151.
- 10 W Omitoogun, Military expenditure in Africa, in *SIPRI Yearbook 2000, Armaments, disarmament & international security*, p 291.
- 11 Protocols such as the Mine Ban Treaty of 1997 and the Terrorism Act that is doing the rounds are examples of the types of laws that have since emerged.
- 12 Omitoogun, op cit, Appendix 5D, p. 291.
- 13 See the extensive report, *Leave none to tell the story*, Human Rights Watch, March 1999, <<http://www/hrw.org/reports/1999/rwanda/>> (4 January 2004).
- 14 D Henk, Security: A new African paradigm, *Occasional Paper 1*, Centre for Defence Studies, University of Zimbabwe, p 5.
- 15 Cited in Henk, Ibid.
- 16 Henk, Ibid.

# **CHALLENGES FOR THE SADC PARLIAMENTARY FORUM: EXPERIENCE AND CONTRIBUTION**

Willibrod Peter Slaa

## **Introduction**

The role of a democratic parliament, apart from legislating, is to ensure oversight on behalf of the respective voters. Over the years the functions of legislation have been effectively undertaken in most parliaments, be they democratic or quasi-democratic. This is because in most countries, not only in the Southern African Development Community (SADC) region, legislative process starts with the executive and parliaments usually act as a rubber stamp, passing into law what is proposed by the government. There are various reasons for this, but a full discussion on the issue is beyond the limits of this paper. Be that as it may, the oversight role has always lagged behind.

This paper will look into the various factors that hinder this critical role and will examine what can be done to empower parliamentarians to undertake an oversight function, which is central to their very purpose of being ‘representatives’.

The paper will further look at the oversight role drawing from various parliaments, both inside and outside the Commonwealth, narrowing this eventually to the SADC region. We shall also focus on the experience of the SADC Parliamentary Forum (SADC-PF), an organ representing over 1,800 parliamentarians in the SADC region and which is currently in the processes of being transformed into a full-fledged parliamentary structure.

## **Basic conditions for oversight**

The democratic, civilian oversight of a state’s security forces is essential for the effectiveness of the security sector. Furthermore, the much lauded principle of ‘good governance’ is a by-product of parliamentary and civil oversight of the functions of the executive.

Today, more than ever, the world is conscious of the protection of human rights, and without any exercise of the oversight role, there is a danger, to different degrees, of the security and the military overstepping their mandates into civilian rights, however subtle this may appear to be. This paper will

therefore review accountability mechanisms concentrating on the oversight by the parliament. Indeed:

- Exercise of the oversight role presupposes the existence of a good, democratically enacted constitution and subsequent domestic, regional and/or internationally accepted treaties and relevant protocols. In a country or situation where there is no democratically posited constitution, it would be difficult to conceptualise even the possibility of an oversight role. A good number of SADC countries have democratic constitutions, and those that are just emerging from civil war are in the process of putting in place democratic institutions, including constitutions.
- The said constitutions basically recognise major tenets of democracy – that is, the principle of separation of powers. Recognition of the need for checks and balances between the three pillars of the state – that is, the executive, the judiciary and the legislature – is a prerequisite for the exercise of an oversight role, be it inside and or outside parliament.
- The existence in a respective country and/or region of democratic governance presupposes a strong multiparty structure and consequently a strong opposition in the house or chambers, as the case may be. The existence of a strong multiparty structure in and of itself is a significant factor in terms of checks and balances. It therefore plays a powerful oversight role – in the case of security issues, both in the house and/or in the standing parliamentary committees – leading to vigorous debates in these structures. As a general principle, a proactive, well-resourced, bipartisan parliamentary committee should be effective in examining all aspects related to the security branch of the executive. Many parliaments in the region are, however, generally constrained in expertise, resources and capacity.
- The existence of well structured, all encompassing Standing Orders governing the proceedings in the house and/or chamber are essential. These Standing Orders give all members of parliament (MPs), irrespective of their party size and representation, the ‘right to be heard’ albeit that the majority may still have ‘their way’ in the final democratic decision-making process. Standing Orders should provide equal opportunity to all MPs, the right to question time, adjournment motions, private motions, private members’ bills, and equal speaking time on the floor. When properly utilised these opportunities provide ample possibilities for individual MPs to perform their oversight role. The problem, however, is the high turnover of new parliamentarians after general elections. These instruments are therefore not well known to MPs; in some cases both old and new MPs. Another problem is the lack of reading culture among many parliamentarians who as a result fail to use the available opportunities provided by the existing instruments, however inadequate they may be.
- Well informed and committed members of the relevant oversight committees – that is, the Public Accounts committees and the Security and

Defence Portfolio committees, as well as any committee by any other name charged with these responsibilities – is required. In order for these committees to perform optimally, a properly trained and qualified parliamentary staff is needed. Efforts should always be made to avoid factors that have a negative impact, such as the appointment of members into oversight committees based on personal contacts or pecuniary considerations, rather than on pure merit. One may have to assess the situation. In Nigeria committee chairmen are appointed by the senate president in consultation with the senate party leaders who are the main players; and the effectiveness of the committees depends on them. In fact, there is much conjecture that “many chairmen were appointed on the basis of loyalty rather than related experience”.<sup>1</sup> Evidently, the selection of competent and qualified members to the oversight committee will enhance the effectiveness of the oversight function of such a sensitive sector. This lesson should be a major challenge to all parliaments in the SADC region.

- It is essential that conditions are conducive to the flourishing of both print and electronic media, supported by good media laws. Investigative journalism is an effective tool of civic oversight, complementary to other watchdog organs. These are also usually a good source of preliminary information to MPs. It is not only the number of newspapers and journals that matters, but also the quality of journalism in any given situation.

### **Civil–military relations**

Broadly speaking, the security and defence sector is meant to include military and the paramilitary forces, the intelligence services, the police force, border guards, customs and immigrations services. These are broadly grouped as the military services, depending on the specific national legislation. Security services are as old as the states themselves and, indeed, function the world over. While differing in scope and accountability, they have in common a mode of operation and a mandate to ensure internal and external security. To a certain degree it is this mandate that makes their operations rather secretive.

It must be noted that lack of security for any state or for its citizens is a major obstacle not only to the life and identity of the particular nation state, but more so to its development. It has been rightly stated that: “... if states are to create conditions in which they can escape from a downward spiral wherein insecurity, criminalisation and under-development are mutually reinforcing socio-economic, governance and security dimensions must be tackled simultaneously.”<sup>2</sup>

It is also true that the security and defence organs are the biggest consumers internationally of the larger proportion of national budgets. Yet, this is done under circumstances of strict secrecy and confidentiality and normally under the pretext of national security interests. In most countries security and defence

organs' budgets are not openly debated on the floors of national assembly chambers, except perhaps for trivialities.<sup>3</sup>

Oversight therefore plays a critical role in containing any abuse, misappropriation, and even decisions that may not be largely in the interests of the respective nations, despite their *prima facie* appearance. A positive trend, however, has been set in the case of the South African Parliament's Committee Chairman, Tony Yengeni, although its effectiveness was put to test when it was over-ruled by the Deputy Defence Minister Ronnie Kasrils, who insisted that "certain military information should remain confidential". One wonders, whether this should be the case even to the representatives of the people, and in particular to people who have taken an oath of service, such as parliamentarians.<sup>4</sup> The same resilience to transparency was also shown by Defence Minister Joe Modise who in August 1997 attacked the press for trying to publish details of a proposed large arms sale to Saudi Arabia and Kuwait.<sup>5</sup>

Alleged high-level corruption in arms deals is, however, currently being investigated by a number of oversight bodies. The Public Accounts Committee has in fact called for an "independent and expert forensic investigation" into claims against the purchase of equipment for the South African National Defence Force (SANDF). The oversight bodies have expressed serious concern over the "rather lax provisions for conflict of interest in the tendering process".<sup>6</sup> Also involved are the auditor-general and independent anti-corruption bodies.

The case of South Africa is a positive pointer and a challenge to the entire SADC region. Interestingly, it is not only in developing countries where parliaments seem to be by-passed when it comes to security and defence issues. In the United Kingdom (UK), for instance, the Parliamentary Table Office will not permit questions in the House on MI5 and MI6. The UK and Canada are further known to be the only North Atlantic Treaty Organisation (NATO) states where ratification of treaties does not require the formal involvement of the legislature.<sup>7</sup> Chairman of the UK's Defence Committee, Bruce George, said: "... [the] UK has one of the least accountable security and intelligence services in the Western world ... unlike the legislatures of other states, Commons select committees have very little formal power".<sup>8</sup> According to George, Saudi Arabia and Uzbekistan are the only countries with worse committee systems.<sup>9</sup>

There is a conviction in contemporary society that there ought to be an assurance of accountability and transparency in institutions that have traditionally operated in secret. This feeling is even stronger in the former Eastern satellite states, which were more closed. At a conference held in Helsinki from 30 June to 2 July 1995, hosted by the Centre for National Security Studies and with the theme 'Security services in civil society: Oversight and accountability', it was categorically stated that:

"... without such control, the security services will of necessity degenerate. We must find ways to exercise control that will not

inhibit the legitimate operations of the security services, for example in combating drug trafficking. On the other hand, we must limit their operations. Our challenge is to develop controls that are strong but not excessive, controls that will prevent the degeneration of the services and at the same time make it possible for us to live in safety.”<sup>10</sup>

This is the challenge to the SADC region. As we shall see later in this paper, the situation described above is in many ways similar to that which pertains in our region; hence the need for an oversight role both inside and outside parliament.

### **Major intrinsic principles of security and defence organs**

The performance of the oversight function is complex. The most complicated in this respect is the monitoring function, which is exercised by all parliaments in the SADC region at different levels and to different degrees. In the case of the security and the defence organs, this function involves:

- organising open and/or closed sessions for questioning security and defence officials on their respective activities, and in some cases even questioning their intentions and procurement procedures, which are highly complex matters on which parliamentarians may not necessarily be experts;
- undertaking routine or special hearings on any subject on which the government plans to have new legislation on security and defence matters, and in some cases even initiating such reforms through private member motions.
- mandating external independent institutions – a university or any such other think-tank – to carry out research on security and defence sector budgets and activities, owing to a parliamentary oversight committee’s lack of appropriate expertise;
- involving outside organs, such as the ombudsman or human rights commissions, to investigate the human rights records and performance of the security and defence sectors; and
- paying special visits to military units and bases.

Theoretically, and in a truly democratic society, the security and defence organs are expected to observe strictly the following principles:

- *Political neutrality.* The constitutions and/or the basic laws of most countries specify that: “Security and Defence personnel cannot be members of a political party or of any organisation with political tendencies”. The practice, however, indicates that this has not always been the case. The case of Romania, although somewhat extreme, is illustrative: “Since 1989 party politicians were appointed to operational deputy director posts within all of

the services resulting in diminished expertise among the leadership and the inflation of non-professional personnel at other levels".<sup>11</sup>

- *Defence of the nation.* Under any multilateral defence agreement, the security and defence of the nation is the prime objective that cannot in any way be substituted. This is the main prerogative of the security and defence departments of each nation state, and likewise of any such regional grouping such as SADC. This prerogative, however, requires a well-funded, highly capable and flexible defence force in which the reserves and the industry play an integral role.

In a consultation process the Australian public expressed their view that "their defence force must be professionally trained, combat-ready, and technologically advanced". This role has been properly expounded by the report on the White Paper on the defence situation in Australia.<sup>12</sup>

While looking into issues of accountability, transparency and general oversight issues – whether as individual nations or as a region – SADC cannot afford not to consider these matters.

- Since the functions of the security and defence departments require a certain degree of confidentiality, the departments ought to demonstrate an ability and willingness to manage their resources in an efficient and accountable manner. This is inherent in the very responsibility accorded them. Meticulous implementation of this principle should mitigate a public outcry and in a way minimise the need for detailed scrutiny either by the Parliamentary Committee or by organs of oversight outside of parliament. Unfortunately, in most cases, and in particular in the developing world, experience indicates the contrary due to manifold situations of abuse and excesses in the use of already scarce resources.
- It is generally argued that in most countries, the most immediate threats are not military, but rather illegal immigration, drug trafficking and now terrorism. A new phenomenon, which includes the SADC region, is participation in peacekeeping operations in the region and elsewhere. This includes peacekeeping field training exercises such as the 'Blue Hungwe' in Zimbabwe in 1977 and the 'Blue Crane' in South Africa.<sup>13</sup>

However, these operations consume large amounts of local resources and should be subject to strict accountability and transparency. Parliamentary oversight is therefore essential, although this area is relatively new and puts new demands on parliamentarians to be able to perform this function effectively.

## **Security and defence in SADC**

The SADC Declaration and Treaty signed by the SADC Heads of State and

Government in Windhoek in 1992, called for:

“...a framework of cooperation which provides for ... strengthening regional solidarity, peace and security, in order for the people of the region to live and work together in peace and harmony. The region needs, therefore, to establish a framework and mechanisms to strengthen regional solidarity, and provide for mutual peace and security.”

This statement was followed up with the establishment of the Organ on Politics, Defence and Security. It is indeed as a result of this that the then South African President Mandela as the Chair of SADC at that time engaged in an intensive series of regional consultations in an effort to mitigate emergent sources of conflict in Lesotho and Swaziland, as well as assisting in finding solutions to the ongoing humanitarian and political tragedy in Zaire (now Democratic Republic of Congo, DRC). Prior to this it is said that SADC leadership was reluctant to exercise regional leadership in issues related to preventive diplomacy and conflict management.<sup>14</sup> In fact, according to Mark Malan and Jakkie Cilliers of the Institute for Security Studies in South Africa:

“The greatest deficiency within SADC arguably relates to the absence of integrated systems, processes and methods to deal with the issues of human rights and the advancement of democracy and good governance ... This is clearly a contentious issue and one about which many SADC member countries are sensitive, not only due to the fact that a country such as Swaziland is perceived to be non-democratic, while others, such as Angola and Mozambique, are in slow transition from a state of devastating civil war ... Countries, such as Zambia and Zimbabwe, have been accused of being undemocratic in election-related practices, while some see South Africa as drifting towards one-party dominance in the absence of an effective political opposition to the ANC ... In other countries, such as Malawi and Lesotho, military and paramilitary intervention in politics remains a real threat ... ”<sup>15</sup>

The above situation is complicated even further when it comes to issues of accountability, transparency and oversight. A few pointers to this complicated situation are mentioned below.

The establishment of SADC as well as its various departments and/or organs has been exclusively the prerogative of the executive. At most, parliaments have been involved marginally at the level of ratification where demanded by the nature of the treaty and/or respective protocol. Major decisions are taken by

representatives at the Summit of Heads of State and Government and by the Council of Ministers. There is very limited involvement of the representatives of the population. This is indicative when one looks at the situation in the DRC where it has been reported that: "... SADC allied forces would like to make it clear to the rebels and their allies that once attacked the SADC allied forces will retaliate in self-defence...".<sup>16</sup> Under these circumstances, one would rightly question where and with what constitutional mandates were the "allied forces established". In the absence of such explicit mandate, would the exercise of the oversight role be practical or possible?

Major decisions affecting not only the structure of the SADC organs but policy issues of a serious nature in the region, are made without the involvement of parliaments, but even more so implementation of some very strategic programmes, as attested to by the following statement of the foreign affairs ministers: "... that significant progress had been made towards strengthening SADC's capacity to prevent, manage and resolve conflict in Southern Africa in a peaceful manner."<sup>17</sup>

How would a parliamentary committee perform an oversight role of a programme whose source of funding has not been identified and when the components of the programme are not even known to the parliaments of the respective SADC countries? Once recommendations of the Council of Ministers are approved by the Summit, there are no formal channels of transmitting the same to the respective national parliaments. In any case, most Council of Ministers and Summit sessions are held in-camera, as attested to on many occasions by briefs and communiqués.<sup>18</sup>

The SADC Organ on Politics, Defence and Security does not seem to foresee any role for parliaments or civil society. Indeed the Organ's objectives include:

"where conflict does occur, to seek to end this as quickly as possible through diplomatic means. Only where such means fail would the organ recommend that the Summit should consider punitive measures. These responses would be agreed in a Protocol on Peace, Security and Conflict Resolution."<sup>19</sup>

It seems from this that the role of parliament does not extend beyond ratification of protocols. Implementation decisions are made by the Summit, even for punitive actions, without recourse or any need for any approvals from the parliaments.

The SADC-PF – an autonomous SADC organ comprising some 1,800 parliamentarians in the region – indicates that in most parliaments, MPs are not familiar with the treaties and protocols, and usually only see them at ratification stage. Even then a whole document is not seen by all MPs, except for those involved in the relevant Standing Committees. Parliamentarians have also indicated that in most cases, even these treaties and protocols have not been

'domesticated' into domestic laws; a matter that further complicates the oversight by the relevant committees of the parliaments, since most members are themselves in the dark.

### **Parliaments in relation to the executive**

The above premises are an indication that there is an inherent resistance on the part of the executive to relinquish some of its powers to the legislature. This phenomenon is, however, not limited to the SADC region. Some pertinent examples indicating this tension are given below.

The South African 1996 multiparty constitution states categorically that "... multiparty parliamentary committees must have oversight over all security services in a manner determined by national legislation or the rules and orders of parliament". It further outlines other mechanisms to be used to exercise accountability and oversight including, *inter alia*, the public protector, the Human Rights Commission and the auditor-general. The powers of the rules and orders of Parliament are categorical and have clearly stipulated the mandate of the committees. The case of South Africa is therefore more flexible and open and creates a positive environment for committees to perform their oversight roles. But in most SADC countries committees remain a 'rubber stamp', as their roles are not guaranteed and enshrined in the relevant countries' constitutions.

Yet even in the South African situation, there is still much to be desired. Committees should be allowed, for instance, to visit military bases and to use the information gathered to advise the executive and parliament on measures to correct a situation. Indeed, oversight involves monitoring, investigation and recommendations to the executive.<sup>20</sup>

Dr Green of the University of Bradford explains that even in well established democracies there are still imperfections pertaining to the control of the security sector. The British House of Commons, for example, has limited oversight of the British security sector, and the one limit it enjoys is as recent as the 1970s. In many cases where parliament enforces its oversight capacities, the executive sets up new bodies to circumvent legislative authority. Yet, as Swiss MP Gross puts it, democracy cannot be a gift; people have to fight for it, and oversight both inside and outside parliament is part and parcel of the democratic process.<sup>21</sup>

Oversight is not a goal in and of itself, rather it is meant to hold government accountable and to oversee that a balance exists between the security sector and society by aligning the goals and needs of the security sector with the goals and needs of the political leaders (society). Legislatures in most countries tend to be weak in relation to the executive. Yet, an effective mechanism is a prerequisite for parliaments to perform effectively and efficiently, without which they are not likely to act in the interests of society as a whole; and this role is performed

through oversight. Bruce George holds that: “the committees are weakened further, by too many members being dead-weights and only one or two members being heavy-weights ... [the] appointment of members and even chairmen, through the committee of Selection, is a rubber stamp for the party whips”. In most SADC countries chairmen are indeed directly elected by the members, and this situation therefore does not quite arise. It is nevertheless essential to have capacity-building programmes for parliamentarians and respective committees. In fact, an inventory of organisations supporting these programmes is available online.<sup>22</sup>

To date, no single set of norms for civil–military relations exists, yet in a democratic society the following main principles should be applied to civilian oversight. Dr Hans Born classifies these as follows:<sup>23</sup>

- Parliament is sovereign and hence has the last say in security and defence policy. Parliaments hold the government accountable for development, implementation and review of security and defence policy.
- Parliament has a unique constitutional role in the authorisation and scrutiny of defence and security expenditures as well as in declaring states of emergency and states of war.
- The state is the only organisation in society with legitimate monopoly of force. This is delegated to the military, and the military must therefore be accountable to the democratic legitimate authority.
- Principles of good governance and rule of law are valid for all branches of government and this includes the security sector.
- Political and military leaders must be committed to a healthy division of labour, that is, political leaders must interfere as little as possible in military decision making and vice versa.
- The military should be considered exclusively as an instrument of national and foreign security policy.

Generally, both inside and outside the SADC region, the effectiveness and power of parliament in relation to the executive in a specific country depends on a variety of factors, such as the constitutional structure of the state (presidential or parliamentary), the influence of interest groups, the political parties, the functioning of parliamentary committees and the dynamics of the government’s policy sector, which parliament ought to oversee.

### **The SADC-PF experience and its contribution to oversight**

As stated above, the SADC-PF is an organ of SADC. It is, however, very special in its nature as it consists of the elected representatives of the people of the SADC region. Its composition is made up of all the presiding officers of the region as well as three representatives elected by the national parliaments. The SADC-PF’s constitution makes it mandatory for its composition to include a

member from the opposition and a female member. The Forum is presently in the process of transforming itself into a fully fledged regional parliamentary structure.

The SADC-PF has been in existence for seven years and has noted the following:

- A number of regional treaties and protocols, including trade, security and defence, and communication have been signed. A number of programmes are already being implemented, spending taxpayers' money from each of the member states.
- Decision making is exclusively dominated by the executive, and the majority of the population in the entire region are kept at bay and almost in the dark, apart from scant pieces of information in the press.
- Even representatives of the population in the region (MPs) are largely uninformed and are hardly ever involved in the various processes, except when required to ratify treaties and protocols. A number of countries are in fact lagging behind in the ratification process, and almost all fall short of domesticating even the ratified protocols.
- Accountability and transparency would not be possible if decisions and implementation of the same are left to the executive, without properly and legally establishing oversight organs.
- The SADC-PF in its present structure would not be able to implement the oversight role, in the fullest sense, without a representative structure.

It is for this reason that the SADC-PF is earnestly working towards its transformation into a regional parliament. While this process is on course, the Forum has taken some provisional steps to avert this situation and to institute, at a lower scale, an enabling environment for the said oversight function of the regional parliament. The SADC-PF has:

- undertaken capacity-building programmes for regional parliamentarians, Forum staff as well as the staff of MPs. A number of capacity-building training programmes have already been initiated in collaboration with funding partners such as the UNDP, the Parliamentary Centre of Canada, AWEPA and USAID;
- established an information technology (IT) department as a support service to MPs and individual parliamentarians in the region with a view to making information readily accessible and available to MPs. The Forum has provided computers to parliaments according to their IT status and needs;
- prepared a handbook on standard electoral norms and practices to be adopted by each national parliament for use in the region as a standard document to gauge good governance, free and fair elections, and other related good practices. The Forum is currently collating various pieces of legislation in the region with a view to preparing harmonised legislation for use in the region; and

- is currently working on the establishment of a leadership centre which will provide various tailored training programmes to the 1,800 MPs and parliamentary staff in the region with a view to building their capacity.

The SADC-PF is already making an impact, albeit in a small way at present, and will contribute significantly to the oversight function in the region once it is fully operational as a regional parliament.

## Conclusion

Challenges facing oversight of the security sector exist not only in the SADC region, but the world over. The main problem of parliamentary oversight is to find the dividing line between parliamentary oversight and executive control. Parliaments should avoid 'micro-managing' the security sector, yet government must respect parliament's constitutional duty to keep the executive accountable: a very delicate balance indeed.

In practical terms, this balance means that government must avoid excessive and unnecessary secrecy regarding security sector issues and must guarantee that parliament has access to all relevant information.

Parliaments have the constitutional duty to enact new laws for the security services in which the mandate, functioning, mechanisms for accountability, transparency, and financial control of the services must be inbuilt to avoid potential conflict and misunderstanding. A single critical function of parliament is to monitor the executive. Although not practiced in young democracies, and particularly not in the SADC region, this must be extended to include screening the mandate, operations, organisation and funding of the security sector. The 'Collins Submarine' case is a pointer to endemic problems in the nature of defence procurement, and this can be avoided with early intervention by parliamentary and civic oversight.<sup>24</sup> In fact the report concludes:

"... the most critical deficiencies in the management of these circumstances lie in the mechanisms of higher level national policy making to review inherently risky approaches at a stage sufficiently early to influence the direction of procurement programmes. What is now needed are procedures to ensure that parliamentary scrutiny and public accountability can play a role in such mechanisms."<sup>25</sup>

## Notes

- 1 See Country Reports on Human Rights Practices for 1999, Nigeria, Bureau of Democracy, Human Rights and Labor, US Department of State, February 2000.
- 2 M Chalmers, University of Bradford, <<http://www.saferworld.co.uk/pubsecu.htm>>.

- 3 D Woolner, Getting in early: Lessons of the Collins Submarine program for improved oversight of the defence procurement, Foreign Affairs, Defence and Trade Group, 18 September 2001 <<http://pandora.nla.gov.au/pan/10850/20020612>>.
- 4 K Good, Accountable to themselves: Predominance in Southern Africa, *Journal of Modern African Studies* 35(4), 1997, p 361.
- 5 Ibid.
- 6 Commonwealth Report, op cit, p 26.
- 7 Ibid, p 40.
- 8 Parliament and National Security, RSU Journal, June 1998.
- 9 Ibid.
- 10 Security services in civil society: Oversight and accountability, Centre for National Security Studies conference, Helsinki, 30 June–2 July 1995 <[http://www.hfhrpol.waw.pl/secserv/conf-ref\[opening.html](http://www.hfhrpol.waw.pl/secserv/conf-ref[opening.html)>.
- 11 L Watts, Control and oversight of security intelligence in Romania, Geneva Centre for the Democratic Control of Armed Forces, Workshop Paper, 3-5 October 2002.
- 12 See <<http://www.defence.gov.au/consultation2/331.htm>>.
- 13 See <<http://www.Namibian.com.na/focus/caprivi/boost.html>>.
- 14 For details see <<http://www.iss.co.za/pubs/papers19/paper19.html>>.
- 15 Ibid.
- 16 See <<http://www.Namibian.com.na/netstories/october99/threaten.html>>.
- 17 Ibid.
- 18 See <<http://www.anc.org.za/briefing/nw20010509/31.html>>.
- 19 See <<http://www.iss.co.za/pubs/monographs/no43/SADC.Organ.html>>.
- 20 For South African experiences see <<http://www.iss.co.za/pubs/ASR/10no1/Nguculu.html>>.
- 21 Ibid.
- 22 See <<http://www.dcaf.ch/pcaf/virtuallibrary/pcaflinks.html>>.
- 23 See H Born et al, *Handbook on parliamentary oversight of the security sector*, Inter-Parliamentary Union/DCAF, Geneva, 2003.
- 24 Ibid.
- 25 <<http://www.aph.gov.au/library/pubs/rp/2001002/0>>.

# PARLIAMENTARY OVERSIGHT OF DEFENCE AND SECURITY IN TANZANIA'S MULTIPARTY PARLIAMENT

Mwesiga Baregu

## Introduction

In 1992, the Parliament of the United Republic of Tanzania enacted the Political Parties Act, which reinstated multipartism in Tanzania's politics. This was after nearly 30 years of constitutional single-party rule that was formally established in 1964, following a failed military coup attempt. The process of proscribing competing political parties and the muzzling of the autonomous civic organisations had, however, been evolving from the early days of independence under the aegis of the Tanganyika African National Union (TANU), which was bent on creating national unity to promote development. Rationalising this trend, Mwalimu Nyerere argued at the time that in order for the twin objectives of nation building and economic development to be effectively pursued and achieved "... there is as much need for unity as was required during the struggle for independence. Similarly there is no room for difference".<sup>1</sup> The country now has 14 registered political parties, five of which are variously represented in Parliament.

During this period of single-party rule parliamentary business as a whole was dominated and manipulated by the ruling TANU party in the 1960s and its successor Chama Cha Mapinduzi (CCM) from the mid-1970s, until the advent of multipartism in 1992. This was also a time during which Julius Nyerere, the 'Father of the Nation', almost single handedly directed the affairs of state and party as president and chairman, respectively. It was particularly the time when the separation of powers and checks and balances between the executive, the judiciary and the legislature were quite tenuous under party supremacy, implementing a policy of 'socialism and self-reliance'.

Tanzania's political system under this policy progressively evolved into a party-state whereby Parliament, in particular, was subordinated to the party national executive and its role was reduced essentially to that of a rubber stamp approving, publicising and legitimising the policies of the party state with very little debate.

Under the system the presidency was not only executive; it became almost monarchical. The 1977 constitution, for example, stipulated that 123 out of 229

members of parliament (MPs) were to be nominated by the party under the chair of Nyerere and the president – none other than Nyerere.<sup>2</sup>

To be sure, there were occasional instances when individual or groups of parliamentarians would dissent from party and government positions, but such incidents were few and far between and the consequences of daring to differ were dire, usually involving expulsion from the party and therefore from Parliament as well. As early as 1968, seven MPs were dismissed from the party for questioning the subordination of Parliament to the political party (then TANU). They consequently lost their parliamentary seats. The 1977 constitution reinforced this situation in two ways. First it subordinated Parliament to the National Executive Committee of the party and turned it into a committee of the general conference. Second, it empowered the president to dissolve Parliament at will. It was not until 1993 that the constitution was amended to vest Parliament with the powers to impeach the president – albeit after a lengthy and cumbersome procedure – to confirm or reject an appointed prime minister and to pass a vote of no-confidence in a sitting prime minister.<sup>3</sup>

Lately there has emerged a growing debate in Tanzania on the workings of multipartism. This debate has had as its aim the assessment of the political efficacy of multipartism as contrasted with the single party system. Most of this discussion has been focused on the effectiveness of the party political system and, in particular, the position and role of the new opposition parties in Tanzania. A contention frequently advanced in this debate is that parliamentary debates were more vibrant and engaging under the single-party parliament than under the present multipart system. It may be safely inferred from this that the scope of issues and the depth of debate have also declined. One reason offered to explain this phenomenon is that the threshold for party solidarity in the ruling party has been lowered and it has been easy to brand any dissent in the ruling party as being 'oppositional' and therefore a betrayal of the ruling party. The danger here is that if that were true and given that the ruling CCM party remains dominant with 257 of the 292 seats, then the House must be considerably quiescent.<sup>4</sup>

In this sense then the introduction of multipartism could, at least in the short term, have achieved quite the opposite consequences. Rather than stimulating debate, promoting the tolerance of dissent, nurturing accommodation and compromise and strengthening parliamentary oversight over public policy, multipartism could be weakening the legislature *vis-à-vis* the executive by cultivating intolerance of dissent and nurturing impunity within political parties under the pretext of party loyalty and solidarity. Certainly the tendency to banish and harass dissenters in political parties is rife across all the parties.<sup>5</sup> Moreover, multipartism could indeed also be weakening the role of Parliament in overseeing the making and implementation of public policy. This would be consistent with the fears expressed by veteran opposition politician Kasanga Tumbo on the eve of the first multipart elections in 1995 when he lamented:

“A multiparty franchise was supposed to entrench democracy under multipartism, but in the absence of institutions established to guarantee democratic life, Tanzania might well revert to [a] one-party system of rule through the forthcoming elections, thereby missing the political objective of establishing democratic rule under multipartism.”<sup>6</sup>

It is interesting to note that the Speaker of the House Pius Msekwa expressed the same fears when assessing MPs’ responsibilities to themselves, the party and to society as a whole in a multiparty setting in which the party whip has acquired new and enhanced significance. When, for example, a three-line whip is invoked over a resolution in Parliament, all MPs are required to be in the House and to vote in support of the motion (or against it, in the case of the opposition). Failure to comply could lead to drastic disciplinary action, including possible expulsion from the party. Alternatively, MPs may be forced to resign from the party. In both cases the MP would automatically lose the parliamentary seat. Msekwa notes:

“Looked at from that perspective, the ineffectiveness of the government back-bencher under multipartism becomes alarming. In Parliament he cannot criticise the government without attracting disciplinary action. On the other hand, rising to speak merely to support the government may be tedious and perhaps even boring. So he may feel it is probably best to say nothing at all. He will thus be sitting there in the House, more-or-less as an observer of the events, which are taking place, while his front-bench colleagues fight it out with the opposition.”<sup>7</sup>

It is even more interesting to note that nearly eight years after the restoration of multipartism, an opposition member of the House recently protested against the Speaker:

“Msekwa is the number one agent for killing democracy in this country. He utilises parliamentary rules of procedure to violate the constitution by silencing CCM members of the House. When the government proposes to privatise [a] public corporation it uses Msekwa to silence MPs after which the companies are sold cheaply.”<sup>8</sup>

This paper is an attempt to enquire into these contentions. It sets out to explore if the legal, political and capacity conditions are conducive to the establishment of an effective parliamentary oversight regime under multipartism in Tanzania. The underlying proposition is that if multipartism

has impacted parliament positively then parliamentary oversight over public policy in various sectors has become more efficient and effective, leading to enhanced transparency and accountability in government. If, on the other hand, parliamentary debates on important questions have been focused on a narrower range of issues or where, indeed, some important policy issues have escaped parliamentary scrutiny due to some features of multipartism, then we will try to establish the extent to which this could be the result of muzzling dissent in the narrow interest of party loyalty but at the expense of the greater national interest. We will look at parliamentary oversight over the sensitive area of defence and national security.

### **Defence and national security in Tanzania**

Traditionally there is no area of public policy that is more sensitive than national security. It is one area which all states have shrouded in secrecy and whose instruments range from the overt to the covert and subversive. It is also an area in which public debate is conventionally restricted, information is sketchy and frequently severely restricted to a few, variously classed, 'security cleared' individuals and groups of people. In brief it is an area defined by confidentiality, disinformation, subterfuge and all manner of cloak and dagger activity, which renders parliamentary oversight a formidable task. A good recent example of this predicament is the ongoing debate in the United States (US) Congress and the British Parliament on whether the heads of state in both countries deliberately lied to their respective legislatures on the question of weapons of mass destruction in the rush to go to war with Iraq for reasons other than those stated to the representatives.<sup>9</sup>

Yet defence and security is such a vital area of public policy both in terms of its subject matter (war) and in terms of the proportion of public expenditure that it cannot and should not be left to the executive alone. It is also a vital area of concern in terms of regulating civil-military relations and in finding a balance between the military security of the territory/state and the socio-economic security of the citizens. The challenge to parliament is how to balance this equation not only as the elected watch dog over public policy but also as the ultimate authority over the public purse. In exercising its responsibilities parliament needs all the information it may require not only to be informed about policy developments but also to be able to make decisions that bind the executive on a particular course of action, which can only be changed with parliamentary approval.

It is interesting, for example, that while the recent sale of a sophisticated aircraft control radar system by the British firm BAE raised a major debate in the British Parliament, it was neither tabled in the Parliament of Tanzania nor even reviewed by its Defence and Security Committee. The purchase of the US\$40 million system raised some furore in the press in Dar es Salaam but was soon

forgotten about. Ibrahim Lipumba, Chairman of the vocal opposition party the Civic United Front (CUF), is reported to have commented:

“Only reports in the UK press have informed Tanzanians as to what is happening. The issue was not presented in Parliament in a way that delegates knew what was going on and the issue never came up in the public expenditure review, which was meant to include the views of all civil society.”<sup>10</sup>

It was generally agreed at the time that the radar system would add to the debt burden of Tanzania and probably half the gains of debt relief, which had just been agreed under the Heavily Indebted Poor Country (HIPC) programme. Editor of *Jane's Air Traffic Control* David Rider argued at the time that the system was not suitable for civil aviation and that a more appropriate system would have been more in the range of US\$10 million.<sup>11</sup>

Chapter 3 of the Constitution of the United Republic of Tanzania spells out the details relating to the establishment, composition and functions of the standing committees of Parliament. Presently, 15 such committees are duly established and functioning, although a process is under way to reconstitute them. The Defence and Security Committee is one such committee, comprising 15 members and chaired by ex-Prime Minister and current mainland Vice-Chairman of the ruling party John Malecela. Whether that is by design or by coincidence is not clear. What it does mean, however, is that the chairman is strategically positioned to link party with government policy. The committee's work, therefore, must inevitably be influenced by the position of the chairman in the ruling party. This is particularly true bearing in mind that the committee has only one member from an opposition party.

It is imperative to note that the extent and effectiveness of parliamentary oversight over defence and security matters in any country will depend mainly on the structural relationship that exists between the armed or defence forces and the government. All governments have such relations with their militaries. Such relations may be formal in the sense of being explicitly spelt out in the constitution and various legal instruments, but, in practice, they are usually informal and frequently embedded in the political cultures and systems of the particular countries. It is these relations that ultimately determine the modalities of civilian control over the military and, specifically, the extent and effectiveness of parliamentary oversight over defence and security affairs.

There are at least four such structural models of civilian control over the military.<sup>12</sup> They are:

- *The military regime*: Under this model the government is fully under the control of the military whose personnel take charge of what would normally be considered civilian functions including the presidency, the cabinet, strategic positions in the ministries as well as in regional and local

government. Under such conditions civilian institutions such as parliament may be suspended or even abolished but in some situations they may be retained as legitimisation symbols. No civilian oversight over the military is possible. This model is applicable to a number of African military regimes including Rwanda and Nigeria, which are in the process of re-introducing civilian control.

- *Mobilisational or movement regimes*: Somewhat akin to the 17th century European monarchies, this model may apply to a number of African countries under movement regimes such as Uganda, Rwanda and Eritrea. Under the model, civilian supremacy is maintained because there is no differentiation between the rulers and the military. Just as the aristocracy at once constituted the civilian as well as the military elite in 17th century Europe, so do movement leaders change easily from colonels and generals to presidents. In Uganda, for example, it is quite common for President Museveni to be in his straw hat in parliament on one day and to change into his helmet and head for the battle front against the LRA in the north, the next day.<sup>13</sup>
- *The professionalism model*: In this model the officer corps is disciplined by its own professionalism. The soldiers accept, internalise or become accustomed to their subordination to civilian control. In return they receive adequate compensation from the political authorities. In this arrangement revolt or mutiny against civil authorities is equivalent to insubordination in the military. The military disciplines itself and the public authorities remain in firm control of the budget and equipping the military. Parliamentary oversight over the military is easiest partly because the executive is under no pressure by the military threatening to take over. It can therefore afford to be open and transparent in the budget and supply process.
- *The penetration model*: Here the military becomes an integral, though subordinate, part of the political authority and is inculcated with civilian political values and interests. Subordination to the military may take the form of selective recruitment through ethnicity or regional affiliation, but the more common method in countries like Tanzania is political/bureaucratic co-optation whereby military personnel are appointed into political and administrative positions such as district and regional commissioners, ministers, diplomats or party cadres.

### **Parliamentary oversight in the penetration model**

As indicated above, the structural model of control of the military that most closely approximates Tanzania's political system is the penetration model. The dismantling of the Tanganyika Rifles (TR) after the 1964 mutiny and the formation of the Tanzania Peoples' Defence Forces (TPDF) in 1965 followed the assessment that part of the reason that the colonially inherited army mutinied

is that it had been left independent of the political process and, in particular, placed beyond the control of the all-dominant political party at the time, TANU. In order to rectify this 'anomaly' in the new army, the penetration model was adopted. This entailed not only the explicit and formal subordination of the military to the party and government but also the politicisation of the armed forces through the inculcation of party ideology. It also meant the removal of boundaries between political authority and the military. Symbolically the political leadership could be seen in military gear but in practical terms military recruitment was undertaken through the party and party leaders undertook military training. At that time Tanzania was close to a movement regime and there was no meaningful independent parliamentary oversight over the government in general.

At the introduction of multipartism, the Political Parties Act, 1992 defined a political party as "... any organised group formed for the purpose of forming a government, or a local authority, within the United Republic through elections; or for putting up or supporting candidates to such elections".<sup>14</sup> With regard to civil-military relations, the act stipulated, *inter alia*, that party branches had to be removed from military areas; military personnel were not to perform political party functions; political commissars were to be removed from military establishments; parties were not to interfere in military recruitment; and that those members of the armed forces who also held party political positions had to choose between a civilian status in the party or a career as a professional soldier. These statutory requirements were duly carried out, but what is instructive is that those officers who opted for civilian positions did not abandon their military ranks, and the appointment of military personnel into government positions has continued unabated to the point that one gets the impression that at the level of regions and districts the country is, for all intents and purposes, under military rule.<sup>15</sup> This reinforces the contention that Tanzania is operating under a penetration model.

Parliamentary oversight under public policy is difficult even under the most liberal model of professionalism. This arises from three key problems. One is the problem mentioned earlier of party loyalty whereby backbenchers are reluctant to be seen to identify with the opposition. The second problem arises from the availability or lack of information. Whereas governments depend on massive bureaucracies and experts for detailed information on policy, parliamentarians – including backbenchers and members of parliamentary committees – are handicapped unless the policy area happens to be one of their own expertise. Otherwise governments tend to bombard and overwhelm parliamentarians with information such that they are made to submit to policies not because they agree with them but because of ignorance. A third reason complicating parliamentary oversight may be cited as nationalism or patriotism, particularly in matters of defence and security where information is not only complex and confidential but the issues themselves are sensitive, emotive and urgent. In

such situations parliamentarians find themselves in very difficult dilemmas since although they are expected to be critical, they are not mandated to obstruct the government. To oppose or otherwise obstruct government action against terrorism in the US at the moment, for example, may be seen as unpatriotic, if not outright treasonous. These difficulties are compounded in a country like Tanzania where MPs are not only relatively less educated but also have relatively less access to information, be it official or from other sources such as the press.

Under conditions such as those described above, the penetration model in civil–military relations in general makes it even more difficult to institute efficient and effective parliamentary oversight of public policy in the area of defence and security policy for the following reasons:

- Independent and unconstrained parliamentary oversight requires that there be a clear separation of powers and checks and balances particularly between the legislature and the executive. Where the boundaries are diffuse and the executive is clearly and overwhelmingly more powerful than the legislature in terms of information and material resources, it is unlikely that parliament, let alone the oversight committee, will be capable of sustaining a strong critical stand against the government. This is particularly true in Tanzania where the executive maintains a close relationship with the armed forces, making it plausible for Parliament to be perceived by the military as being against the defence forces.
- The oversight function of parliament can be enhanced by the existence of a strong, organised and clear opposition in parliament. Such an opposition would not only keep their counterparts in parliament and the executive on their toes but it would, perhaps ironically, also assist the backbenchers in their quest for some relative autonomy from the executive in executing their responsibilities as legislators with some leverage over their party government. In Tanzania the numerical weakness of the opposition combines with its lack of organisation and strategic clarity to render it ineffectual in enhancing parliamentary oversight.
- The effectiveness of oversight committees will also depend on the structure and functions of party committees in parliament and their relationship with their parent political parties. The Political Parties Act, 1992 abolished the TANU (later CCM) parliamentary party formed in the early days of independence (1962–65) when Parliament operated under multiparty principles. Parliamentary Standing Orders and Rules of Procedure were amended in July 1992 when the restored multiparty Parliament met to provide for the formation of parliamentary party caucuses, bringing together all MPs of the political parties represented in Parliament. In theory these committees are supposed to be consultative between the government and its party representatives. In practice, however, every time there has been a situation in which (CCM) backbenchers have taken a strong position

against the government they have been summoned as a party caucus to ensure "... full loyalty and disciplined support of all its MPs".<sup>16</sup> This imposes limitations not only on the MPs but also on members of the ruling party in the oversight committees.

- To a large extent the success of the oversight committees, like parliament itself, will depend on the degree to which MPs can exercise some independence in their functions. The Tanzania constitution presently disallows independent candidates for Parliament, local government councils and other public representational positions. Thus all MPs have to obtain the support of some political parties in order to run for election. They also have to maintain that support once elected. Apart from the fact that this rule is likely to attract candidates simply for the party label, it means that all MPs have to toe their party lines. But where party lines are blurred, unstable and can be reduced to the whims and fancies of the party leader, it creates a situation of extreme uncertainty and blind loyalty to the leader. Security of tenure becomes threatened. In such situations issues and principles are likely to give way to imperatives of survival, and opportunism becomes the rule of the day.
- The composition and competencies of parliamentary oversight committees is also of the moment. A committee composed of a majority of people with some relevant competencies in the field is likely to be more effective than one with only a few competent people or none. By the same token a committee composed of a broad range of political views is likely to benefit more from debate and discussion than one composed of people with similar views. The oversight committees of the Parliament of Tanzania suffer from both deficits. Owing to the educational and occupational backgrounds of most MPs the committees do not enjoy a broad range of skills and experience to choose from. This lends them vulnerable to browbeating state bureaucrats, particularly when it comes to technical issues and complex socio-economic matters. Furthermore, owing to the small number of opposition party members the committees tend to have one or two opposition members out of a total membership of over 10 or 20 members. The Defence and Security Committee, for example, has two opposition members out of a total of 14. The Foreign Affairs Committee has only one opposition member out of 21.

## Conclusion

This paper has not analysed the work of the Defence and Security Committee of Tanzania's Parliament. Instead, it has looked at the broad range of tasks of oversight committees and described and analysed the conditions under which these committees can become effective. It has identified the critical elements which should constitute an effective parliamentary oversight framework and

pointed to the problems that are likely to confront Tanzania's Parliamentary Defence and Security Committee. On the whole, an examination of the legal, political and capacity conditions shows that effective parliamentary oversight particularly in the sensitive area of defence and security needs attention. In order to improve these conditions the following should be undertaken:

- Positive steps must be taken to fully professionalise the military by removing arrangements that seek to co-opt the armed forces into civilian positions. Tensions between the military DCs and Rcs and their constituency MPs are quite common.
- Although it was believed that the re-introduction of multiparty politics would enhance the position and role of Parliament, the opposite seems to have been the case, with executive power enhanced through party control over MPs. This problem can be addressed in the short run by reducing the powers of the Chief Whip and the number of issues brought under the whip. In the long run, however, it calls for the re-introduction of independent MPs in Parliament so that MPs who differ with their parties can run independently and those who do not belong to any party can also enjoy their constitutional right to vote and be voted for. This would also open the possibility of MPs crossing the floor without losing their seats or the right to contest in those seats, ensuring that security of tenure for representatives rests in the hands of their constituencies.
- The recent trend of opposition defections to the ruling party does not augur well for a strong and effective opposition in Tanzania and if it continues Tanzania could revert back to being a one-party state, and this time with a vengeance since it would have been sanctioned by the defections. The Nyalali Report and the Political Parties Act, 1999, resulting from it, both need to be revisited in the interest of establishing an environment in which the nascent opposition parties can grow and make a meaningful contribution to national transformation. The alternative is to maintain a symbolic opposition and an empty democracy.

## Notes

- 1 JK Nyerere, *Freedom and unity*, Oxford University Press, London, 1967, pp 157-58. For an incisive review of the period from independence to the reintroduction of multipartism in Tanzania, see M Baregu, The rise and fall of the one-party state in Tanzania, in JA Widner (ed) *Economic change and political liberalisation in sub-Saharan Africa*, Johns Hopkins University Press, Baltimore and London, 1994.
- 2 See M Baregu, The position and role of the presidency in Tanzania under one-party authoritarianism and multiparty democratization, in S Mushi & R Mukandala, *Multiparty democracy in transition: Tanzania's 1995 general elections*, TEMCO, Dar es Salaam, 1997.
- 3 See Mushi & Mukandala, op cit.

- 4 From the 2000 elections the other seats were held as follows: CUF, 22; CHADEMA, 5; TLP, 5; and UDP, 2.
- 5 The expulsion of CUF MPs from the House in 2001, the recent suspension of two CCM, one CHADEMA and one CUF MP on 10 June and the rampant expulsions and counter-expulsions among the opposition parties in particular all point to this trend of intolerance. Some MPs from the opposition parties have lost their parliamentary seats after being expelled by their parties.
- 6 Ambassador CSK Tumbo, Civic awareness and patterns of participation, in *Political culture and popular participation in Tanzania*, REDET Publication No. 2, Dar es Salaam, 1997, p 51.
- 7 P Msekwa, *The transition to multiparty democracy*, Tema Publishers Company/ Tanzania Publishing House, Dar es Salaam, 1995, p 48.
- 8 This is an interesting allegation suggesting that the Speaker has been granted the powers of Chief Whip by the CCM. The reference to the privatisation of companies should be read in conjunction with the recent controversy surrounding the appointment of Pius Msekwa to the chairmanship of Vodacom (Tanzania).
- 9 See J Pilger's article in *The Daily Mirror*, London, 3 June, 2003 in which he accuses Blair of the high crime of the invasion of Iraq with deceptions. See also <<http://pilger.carlton.com>>.
- 10 Reported by *World Bank Development News*, 21 December 2001, p 10.
- 11 *The East African*, 24-30 December 2001.
- 12 This discussion draws upon S Beynham, Civil-military relations in post-independence Africa, *South African Defence Review* 3, 1992.
- 13 EA Nordlinger, *Soldiers in politics: Military coups and governments*, Prentice Hall, Englewood Cliffs, 1977.
- 14 United Republic of Tanzania, Political Parties Act, 1992. (No. 5 of 1992) Government Printer, Dar es Salaam, 1992.
- 15 Empirical work needs to be carried out to verify what is now an impression derived from scholarly observation.
- 16 P Msekwa, op cit, p 52.

# PARLIAMENTARY OVERSIGHT OF THE SOUTH AFRICAN DEPARTMENT OF DEFENCE: 1994 TO 2003

Thandi Modise

## Introduction

When in 1995 the Minister of Defence – a senior member of the African National Congress (ANC) and a veteran of the Freedom Struggle – presented his plans to buy secondhand ships and submarines for the South African Navy, the Joint Standing Committee on Defence (JSCD) politely refused to endorse his plans. The committee not only questioned his decision to buy secondhand ships and submarines, but also declared that the very legitimacy of the defence force needed to be tested before new acquisitions of this scale could be approved. A little later, the language preference of command-and-control became the focus of the South African defence debate. After much deliberation the committee recommended that English be used, as most members of the newly integrated South African National Defence Force (SANDF) could understand it. This was challenged by the Department of Defence and the chief of the SANDF requested the president to overrule Parliament. President Mandela tried to get the chairperson of the JSCD to back down, only to be told that the decision rested with the committee as a whole, and not with the chairperson. Ultimately the president discussed the matter with the committee. The result is that the decision of the JSCD remains unchanged until today. The Minister of Defence and the department learned that Parliament could use its powers, without fear, if it wanted to. These events led to Africa's most comprehensive defence transformation in modern times, culminating in the South African White Paper on Defence (1996) and the Defence Review (1998).

Much later, in 2000, when the Conventional Arms Control Bill was tabled in Parliament, the National Conventional Arms Control Committee (NCACC) preferred that the bill be discussed by the Foreign Affairs Committee. The Portfolio Committee on Defence considered the matter, studied the rules, and decided that in fact the bill fell directly within its scope of work and therefore invited the Committee on Foreign Affairs to consider the bill together with it. After the first meeting, the committee mandated the chairperson to have discussions with the minister and the chairperson of the NCACC, who sponsored the bill. He was asked to withdraw the bill as it was, in the opinion of

the committee, badly drafted. Other than grammatical errors, the constitutionality of the bill and adherence to policy guidelines were challenged. In the end the bill was withdrawn.

When the new version was tabled the committee decided that, as the drafters still failed to present a bill that was constitutionally and politically correct, it could be rejected within the Rules of Parliament. The National Convention Arms Control (NCAC) Bill was the first of its kind and the committee argued that as public representatives they had a duty to control South Africa's choice of clients and partners for defence related trade and cooperation. As the committee had participated in the formulation and approval of security and defence policy they were adamant to see it reflected in legislation. They refused to pass any law they could not live with. They took the position that as elected public representatives, they had an obligation to reflect the aspirations of South Africans in the policies and laws of the country.

### **The constitutional framework**

Chapter 4 of the South African Constitution, 1996 sets out the functions of the National Assembly and the National Council of Provinces, and Section 42(3) provides that:

“The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action.”<sup>1</sup>

Like most countries, South Africa gives its security establishments the duty to defend and protect the Republic against threats from within and outside our society. At an international expert meeting organised by the Commonwealth Policy Studies Unit (CPSU) it was observed that these structures are given powers to apply a range of tools coercively in the pursuit of this objective, often in conditions of secrecy. It is this very capacity for the use of force that makes it so important that parliamentarians must be able to control the agenda and character of these structures to ensure that these tools of coercion are not abused.

When in 1994, at the end of apartheid, South Africa integrated seven armed forces to form a single new national defence force this required a complete transformation from the way in which defence was conducted in the previous era. The legitimacy of the force, equitable race and gender representation, a non-provocative defence posture, appropriate and affordable force design, a culture aligned with the norms and values of the nation and the subordination of the armed forces to civil authority became the focus of the new defence

debate in South Africa. These issues were considered of prime importance and required the attention of Parliament to ensure a new defence force that was aligned with the principles of defence in the new South African democracy.

As a young democracy, representatives of the people need constant mandates from the people. As a country that did not previously allow public participation on security issues, the opinion and will of the people had not been accommodated. In the young, new South African democracy, respect for human rights and the rule of law become paramount; that is why South Africa elected to provide for an Oversight Committee on Defence in the Constitution. Chapter 14 of the Interim Constitution (1993) and Chapter 11 of the Constitution (1996) are devoted to South Africa's security services and civil-military relations.<sup>2</sup>

The constitution provides that the president is the commander-in-chief of the SANDF, the minister of defence, who is appointed by the president, is accountable to Parliament and Parliament is given a range of powers to exercise effective democratic control over the military. Parliament authorises policy, has legislative powers, approves the budget and can endorse, alter or cancel the president's decision to employ the SANDF. The secretary for defence (a civilian) is the head of department and accounting officer as well as chief policy advisor to the minister, while the chief of the defence force has executive military powers under the direction of the minister.

### **The Joint Standing Committee on Defence in the transition phase**

The JSCD was established in terms of the South African constitution and is mandated:

“to investigate and make recommendations on the budget, functioning, organisation, armaments, policy, morale and state of preparedness of the National Defence Force and to perform such other functions relating to parliamentary supervision of the Force as may be prescribed by law.”<sup>3</sup>

The JSCD has since 1994 monitored the integration and transformation of the SANDF. It has made some recommendations, criticised and given praise when this was due. To monitor the transformation process the committee had to grapple with:

- the need to provide decisive and strategic leadership to guide the transformation process;
- the capacity to direct and monitor transformation of the organisation's culture, traditions, leadership styles and racial and gender compositions. The requirement for a civic education programme was identified very early on during the integration process. The programme is ongoing and is used to re-orientate all members and to cultivate shared values within the organisation;

- the need for the public representatives to 'sell' the SANDF to the people to obtain the largest possible degree of 'national consensus on defence' and to ensure the people's ownership of the defence force;
- the need to balance the public interest with the need for confidentiality if this is in the interest of the safety and protection of operatives and the overall security of the country; and
- the importance of establishing a common understanding of concepts and definitions. The major issues were civil as opposed to civilian authority, non-partisan versus apolitical service men and women and the meaning of control (was it managing, interfering or monitoring?). It was necessary for the JSCD not to allow itself to end up micro managing the Defence Department, but to establish and maintain a healthy civil–military relationship. The committee recognised that civilians were not necessarily better or more efficient in holding the military to account. A quick study of Africa's security forces will show that civilians have not always been better at the oversight of security forces. PW Botha is one such example for under his rule (1978–89) the South African armed forces become politicised. Nigeria's many military administrations were always supported by or run with the connivance of civilians who would 'invite' the military into politics. In the current South African case, the JSCD tries to provide clear, unambiguous guidance to enable the military to achieve its defined mandate and objectives within the allocated resources. Committee consensus is important to build trust amongst committee members and between the committee and the military forces.

There is uncertainty and questions are often asked as to why South Africa needed, and still needs, the Parliamentary Defence Committee. This must be put into perspective:

- South Africa needed to integrate previous enemies into one national defence force. The emphasis was on real integration and not simply absorption into the old South African Defence Force. Political oversight was required to ensure that all interests were served.
- Due to the history of the country, the civilian population had neither the knowledge of, nor acceptance, confidence or respect for, the military. They would not accept or trust a non-transparent solution.
- Negotiations before the formal integration had not gone particularly smoothly. Many matters remained unsolved and only the peoples' representatives could adjudicate these issues.
- The transformation of the SANDF is an ongoing issue and still needs parliamentary oversight. Furthermore, the requirement for transparency, accountability and democratic control is fundamental to defence in a democracy and requires the continued functioning of the committee.

## **The powers and functions of parliamentary committees**

The JSCD straddles the National Assembly and the National Council of Provinces and was therefore seen as a mechanism for multiparty supervision over integration and related matters.

The Portfolio Defence Committee is a committee of the National Assembly with membership that allows all parties to participate. Rule 201 of the National Assembly provides that:

“A portfolio committee;

- Must deal with Bills and other matters falling within its portfolio as are referred to in terms of the Constitution, these Rules, the Joint Rules or by resolutions of the Assembly;
- Must maintain oversight of (i) the exercise within its portfolio of national executive authority, including the implementation of legislation; (ii) any executive organ of State falling within its portfolio; (iii) any constitutional institution falling within its portfolio; and (iv) any other body or institution in respect of which oversight was assigned to it;
- May monitor, investigate, enquire into and make recommendations concerning any such executive organ of state, constitutional institution or other body or institution, including the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies of such organ of state, institution or other body or institution;
- May consult and liaise with any executive organ of State or constitutional institution;
- Must perform any other function, tasks or duties assigned to it in terms of the Constitution, legislation, these Rules, the Joint Rules or resolutions of the Assembly including functions, tasks and duties concerning parliamentary oversight or supervision of such executive organs of state, constitutional institutions or other bodies or institutions.”<sup>4</sup>

## **The requirement for parliamentary oversight**

Understanding the role of parliament and oversight has not been easy in South Africa. It took time before members of Parliament (MPs) began to internalise the separation of powers and to expect the executive to justify their decisions to Parliament and not the other way round. Oversight is generally weak in countries where the executive is strong and the legislature is weak. In fact if one

were to analyse the Southern African Development Community (SADC) alone during the past three years, one would find that the region suffers from weak legislatures and that loyalty to the party hierarchy is sometimes confused with loyalty to the people.

Capacity building is essential if parliaments are to exercise effective oversight over the military. There is great need to understand and reconfigure the relationship between the executive and parliament on the other hand, and to ensure that a healthy and expert relationship is built between the military and parliament on the other. There must be no confusion between the roles played by the Ministry of Defence and the parliamentary committees. The ministry has 'executive oversight and control'; it must 'manage' defence force policy and keep a tight reign over the defence budget and acquisition cycles. South Africa allows for public input and sometimes the committee actually finances disadvantaged public members who wish to appear before the committee. Public hearings are a standing budget item for the committee.

This public involvement and consultation is not without its own problems, for example, how far can one go in public consultations? Resources and time become important issues to be dealt with. Parliament cannot be biased; it must treat everybody in the same manner and avail the same information to everyone be they radical, extremist, pacifist, rural or sophisticated. It is not possible to know why people are interested but often women, religious groups and the aged are marginalised from the defence debates because of lack of organisational and institutional capacity.

It is necessary, but difficult, to assess the capacity of the public to influence national debates on security and to monitor the readiness of the public to engage, and the extent to which this engagement is constructive or destructive. When there is public engagement, parliament is not absolved from its responsibility to represent the will of the electorate and the majority. Parliament is the legitimate guarantor of majority will. It is therefore crucial for parliamentarians to develop and maintain the capacity required to understand defence policy, planning, programming and budgeting procedures as well as general military matters. They must develop the knowledge and skills needed to analyse, interrogate and promote defence and security policy.

During the defence transformation process in South Africa and to date, the defence committees have had the motto: 'defence is not a party political matter'. All members get the same speaking time and all members can present options and are consulted and lobbied in the same manner. Thus far neither committee has experienced any 'leaks' although some meetings take place away from the public. This has built trust and respect among members. Sometimes there are, of course, disagreements and arguments that require committees to even vote on issues. This is fortunately very rare. When there are disagreements, these are approached from the perspective of the interests of defence and not of the political parties.

## Challenges to parliamentary oversight

Obviously all is not always plain sailing and often oversight committees run into challenges for which no easy, ready-made answers exist. Some of these are:

- *Limits of transparency.* The South African White Paper on Defence states that: "Defence policy and military activities shall be sufficiently transparent to ensure meaningful parliamentary and public scrutiny and debate, insofar as this does not endanger the lives of military personnel or jeopardise the success of military operations".<sup>5</sup> It is not always easy to define clearly when this position has been reached and it is therefore important that there be good and open relations between the committees and the department to reach amicable and acceptable compromises. South Africa has also promulgated an Access to Information Act, to provide a legal basis for solving such disputes.
- *The Members' Bill instrument.* This facility allows MPs to identify policy and legislation gaps and to draft recommendations to remedy such gaps. This helps alleviate the perception that the executive carries the sole responsibility for policy and legislative formulation and tabling. The challenge is to create enough capacity and confidence among members so that they actually utilise this instrument.
- *Policy as opposed to operations.* Convention holds that MPs should not meddle in operational matters. There is obviously a fine line between policy and operational practice. When elected civilians do not extend or exercise their oversight and control far enough, human rights and other abuses may occur. The executive often gives the security forces mandates with general objectives. Those mandates are often valid from the national security perspective but may end up being unconstitutional. For example, the South African Constitution prohibits torture and therefore any result or information obtained by means of torture would not be acceptable.
- *Budget.* The defence budget system is complicated. Committees need to understand these processes and must therefore develop enough skills to analyse, monitor and advise on defence expenditure. In theory, parliament can exercise its control over the executive because it controls the budget. Reality could not be further from the truth. Clear guidelines for expenditure must be set and understood by both the military and those who exercise control over the military. What role do parliamentary committees play when defence spending continues to be below the required amount to execute and sustain defence policy? Is it not their duty to be concerned with the functioning, state of readiness and morale of the military? Should they not guide the balance between social, developmental and defence expenditure?
- *Regional integration and cooperation.* The New Partnership for Africa's Development (NEPAD) is premised on the regional integration of policies, systems and structures. Should parliaments in the region not be looking at

common policies and concepts and at the rationalisation of these? Should common concerns like civilian support roles (e.g. support to the police), peacekeeping and humanitarian employment not be issues parliamentarians agree about?

- *Balance.* As parliamentary committees play their respective oversight roles, they need to share on strategies regarding grievance procedures, demobilisation, gender balancing, professionalisation and, importantly, race and ethnic balances within the forces of the region. They cannot exercise oversight properly if they ignore the balance of power within militaries.
- *Committee priorities.* Priorities change over time. In 1994 South Africa's priority was integration and civil control over the military. This later changed to demobilisation, right sizing, equal opportunities and civic education. The parliamentary committees have also given attention to defence industry policies and are considering South Africa's international role within the reality of restricted resources and available finances to defence. Health and fitness levels remain a constant consideration for the committees.
- *Reconsidering the strength of parliaments.* Countries with stronger legislature traditions tend to emphasise the role of the legislative mechanisms entrusted with oversight roles, such as committees of parliament, the ombudsman, the approval of budgets, etc. Countries with stronger executive cultures rely more on the regulatory role of civil servants, the finance ministries and presidential control to ensure the subordination of security to civil power.

## Conclusion

The South Africa experience of establishing and entrenching healthy, democratic civil–military relations and parliamentary oversight of the military was a long process and required commitment and conviction. It is often stated that this transformation was a process and not an event. Fortunately the process was anchored in the constitution that was itself the product of fundamental and inclusive negotiations. During the development of a new defence policy in the form of the White Paper on Defence and the Defence Review and the later development of a new Defence Act and other legislation, the JSCD insisted on transparent, consultative and inclusive processes and was willing to contribute at all levels in these processes. The JSCD refused to act as a rubber stamp on work done by officials but served in sub-committees and workgroups involved in the actual research and drafting of policy. This was met with some resistance initially and was seen as an interference, but with time it was accepted and in fact welcomed. This approach set a precedent that has lasted till today.

It is clear that empowerment of parliamentary committees is a function both of legal power entrenched in legislation and the capacity and resolve to exercise such power. This requires that committee members enhance their knowledge of defence matters and build their capacity to exercise their oversight functions.

This is best achieved by developing good cooperative relations between parliamentarians, defence officials and civil society involved in the defence sector to ensure a partnership to the benefit of all. Such a partnership should be built on mutual learning, respect for one another and the building of trust.

There is nothing as dangerous to democracy as an ignorant MP; let us keep on learning.

## Notes

- 1 Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), Republic of South Africa, *Government Gazette* 378(17678), Cape Town, 18 December 1996, Chapter 4, Section 42(3), p 23.
- 2 Interim Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), Republic of South Africa, *Government Gazette* 343(15466), Cape Town, 28 January 1994, Chapter 14, Sections 224 to 228, pp 146-150; Constitution of the Republic of South Africa, 1996, op cit, Chapter 11, Sections 200 to 204, pp 88-89. [Note: Schedule 6 - Transitional Arrangements to the Constitution (1996), Section 24(1) provides that "sections 224 to 228 of the previous Constitution continue in force as if the previous Constitution had not been replaced, subject to ... ."]
- 3 Interim Constitution of the Republic of South Africa, op cit, Chapter 14, Section 228(3)(d), p 150.
- 4 Rules of the National Assembly, Chapter 12: Committee System, Rule 201(1) [www.parliament.gov.za](http://www.parliament.gov.za).
- 5 South African White Paper on Defence, 1996, Chapter 1, p 4.

# PARLIAMENTARY OVERSIGHT ON MILITARY EXPENDITURE: THE ZAMBIAN CASE

Emanuel Chungu

## Introduction

This paper examines how from 1964 to 2001 civil control of the military was enshrined in the Constitution of Zambia, Constitution Act 1964, article 100. It also examines how the Zambian Parliament used its legislative powers to control the behaviour, administration and activities of the military, to legalise government's declaration of a permanent state of public emergency between 1964 and 1992 in the face of external aggression from neighbouring colonial states, and how Parliament used its powers of budgetary allocation and supervision through parliamentary committees to control defence expenditure.

It is important to note that Zambia is a former British colony which existed in a state of relative peace and had never experienced any successful military coup d'état. The Zambian leadership was fortunate in having a body of doctrines, theories and control mechanisms that were inherited from their British colonial masters.

The Zambian government applied these theories of civil control in the years after independence and improved on them by introducing a policy of integration and cooperation among the political elite, the military and the citizenry, especially when they were faced with problems of external security threats from neighbouring countries, which had not yet attained their independence.

In order to analyse the topic properly, the paper will examine the relationship between Parliament and the military by looking at the following phases of Zambian history:

- Zambia's First Republic (1964 to 1972) under the British-negotiated 1964 Constitution;
- Zambia's Second Republic (1973 to October 1991) under the modified independence constitution which ushered in the one-party participatory democratic system of government; and
- Zambia's Third Republic (from 1 November 1991) which came into being through a new constitution that brought about the reintroduction of a multiparty democratic system of government.

## Definition

David Chuter in *Defence Transformation* defines civil control of the military as:

“the obedience which the military owes to civis, the state. The military is one of a number of instruments of state, of which other examples are the police, the fire service, the diplomatic service, and, in many countries, the medical service. Like these other bodies, the military has a duty of loyalty to the state, which employs it on behalf of the citizen and the taxpayer. The military, among its other functions, thus advises on the formulation of defence policy and helps to carry it out. But it does not make defence policy, of course, any more than doctors make health policy, or police officers make policy against crime.”<sup>1</sup>

## Parliamentary oversight over defence expenditure 1964 to 1991

At the time of independence Zambia’s geo-strategic position was precarious in that it was surrounded by hostile colonial states that detested the Zambian government’s foreign policy of giving bases to liberation movements fighting for the independence of their respective countries. In this situation, the independent Government of Zambia had to take the external and internal security threats of its neighbours seriously by embarking on the expansion of its military forces. Internally the new government had the responsibility of wiping out the last vestiges of racial discrimination promoted by the previous British colonial administration. At the same time the government had to unite the 73 tribes of Zambia into one united people under the motto of ‘One Zambia, One Nation’. In order to achieve these tasks the government decided to provide effective administration and political solutions of nationhood by taking effective control of Zambia’s geographic, linguistic and military problems for the maintenance of external and internal stability, law and order, national coherence and the legitimacy of the government under Dr Kenneth Kaunda’s United National Independence Party (UNIP).

Given the imbalances that existed in terms of class and ethnic representation in the Northern Rhodesia Regiment as a result of the British policy of differentiation, whereby only five out of 73 ethnic groups commanded by British soldiers dominated the military forces, the Zambian government and legislature had to come up with national policies and legislation that fitted into the new nation building motto and which aimed at harmonising civil–military relations in the country. To this effect the government passed a policy which required that recruitment into the Zambian Army be done in such a way that it provided representation to all 73 of the country’s ethnic groups. Professional status and advancement to the highest ranks in the army also changed from

being determined by race or country of origin to determination by professional conduct, behaviour and bravery. The above policies were backed by the Zambian Parliament's passage of article 100 of the Constitution of Zambia which provided for the establishment of an armed force known as the Zambia Defence Force, which "shall be non-partisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civil authority as established under this constitution".<sup>2</sup> The constitution also provided that the commander-in-chief of all the armed forces in Zambia was the republican president who had formal control over appointments and the promotion of military officers to the highest ranks as well as the designation of elected civilians as constitutional heads of the Ministry of Defence.

The Defence Act, Chapter 131 of the Laws of Zambia, was framed in such a way that it provided a legislative environment that aimed at starting the process of harmonising the relations between the defence force and the civilian community right from 1964. The Act provided for:

"The creation and maintenance in Zambia of a Defence Force consisting of an Army comprising the Regular Force of the Army, the Territorial Force of the Army, the Army Capital Reserve, and the Territorial Army Reserve, and an Air Force comprising the Regular Force of the Air Force, the Auxiliary Air Force, the Air Force Reserve, and the Auxiliary Air Force Reserve; ... to provide the conditions of discharge of soldiers from the Regular Force and for their transfer to the Reserve Force; ... to provide for the composition of and enlistment of persons in the Territorial Force, for the training of persons enlisted in such force; ... for the embodiment of such Force when necessary in the public interest, for the discharge of persons from the Force and for all other matters affecting the discipline of the Force."<sup>3</sup>

The above demonstrates that apart from having an army of regular forces, the government's intention to create a reserve force that comprised retired former members of the Zambia Defence Force who could be called upon at any time for military service to supplement the work of the regular forces when the need arose, was a clear manifestation of the intention to bridge the gap between the military and civilians in Zambia. During the transition from colonialism Zambia's sovereignty continued to be threatened externally by minority regimes in South Africa, Southern Rhodesia, South West Africa, Angola and Mozambique, and internally by the Leshina and Adamson Mushala uprisings in the northern and eastern provinces, whose leaders preached against respect for government authority. Later in 1973 as a protest against the formation of the one-party state system of government in Zambia, the late Adamson Mushala led an armed rebellion against the one-party state government, which he

considered undemocratic. The government under Dr Kaunda crushed this rebellion using both military and paramilitary troops.

The above external and internal security threats forced the government to table laws related to emergency powers and to establish the Zambia Security Intelligence Service. To this effect the Emergency Powers Act empowered the republican president:

“to make emergency regulations whenever an emergency proclamation is in force: to specify the matters which may be provided for in emergency regulations; to provide for the duration of emergency regulations; and to provide for matters incidental to or connected with the foregoing.”<sup>4</sup>

The Act empowered the president to:

“make such regulations as appear to him to be necessary or expedient for securing the public safety, the defence of the Republic, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.”<sup>5</sup>

The Act also gave powers to the president to make provision for detention and exclusion from the Republic of persons who were not citizens of Zambia and authorised the republican president to take “possession or control on behalf of the Republic of any property or undertaking”, to “authorise the entering and search of any premises” and to “provide for the apprehension, trial and punishment of persons offending against the regulations”.<sup>6</sup>

Other important acts passed by the Zambian Parliament related to defence management of the country were the Home Guard Act No. 32 of 1971, which made provision for the establishment, maintenance, discipline and administration of the Home Guard; the Zambia National Service Act No. 35 of 1971, which made provision for the establishment, maintenance, governance and discipline of the Zambia National Service; and the Defence Amendment Act No. 24 of 1987, which provided for the granting of honorary commissions to deserving citizens of Zambia by the republican president. It is clear from the foregoing that between 1964 and 1991, the role of Parliament in defence and security matters was to assist the executive to pass laws on the floor of the House related to the Ministry of Defence in order for the state to fulfil its responsibility of ensuring the maintenance of peace and security in Zambia.

### **Limitations to the oversight role**

As a result of Zambia’s support for the liberation movements of her

neighbouring countries there was apprehension in the government that if defence and intelligence budgetary allocations were exposed by being debated in Parliament the country's enemies would have been in a position to assess and undermine Zambia's defence capabilities. This would have greatly undermined the government's ability to preserve and defend the sovereignty and territorial integrity of Zambia. The executive then argued that it was not in a position to define clear limits between the need for transparency in defence and intelligence services oversight and the exigencies of national security. The executive, through the republican president, therefore continued the colonial and predominant commonwealth countries' policy of government directly allocating money for defence and intelligence services secretly, without subjecting the allocation to parliamentary oversight by any of its committees or public debate during the annual consideration of the national budget. The government justified this move on the basis that security organs were shaped and managed according to exigencies of war, both hot and cold, and according to the principles of secrecy. Executive command and the demands for secrecy due to the security situation had militated against parliamentary oversight. It was argued that this helped to secure the lives of operatives and the success of security operations.<sup>7</sup>

In 1973, Zambia was declared a one-party state under UNIP and all opposition political parties in existence, such as the African National Congress, went into voluntary liquidation. Article 4 of the Republican Constitution made the ruling party (UNIP) supreme over all other institutions (including Parliament) in the land. All MPs now belonged to one party, UNIP, and this made it very difficult for Parliament to begin demanding the need for the House to debate defence expenditure. This was because, whereas before 1973 there were a number of democratic mechanisms – both formal and otherwise – which placed government executive and its policies under the magnifying glass, Parliament alone now played this role. Within the parliamentary framework a set of procedures and structures previously indirectly participated in the supervision of the executive over defence and security administration. They did this, for example, through the legislation process, which allowed the opposition to present amendments. After 1973 this loophole was closed as all members belonged to the same party whose policies they could not oppose and this made it difficult for the House to perform its oversight functions over defence and security expenditure.

At the same time, despite the fact that Parliament passed several acts related to defence, intelligence and emergency powers, lack of a parliamentary committee on national security and defence made Parliament ineffective in scrutinising governmental responsibilities and activities in the defence of the country. The complexity of legislation related to defence did not allow every member to examine satisfactorily the pros and cons of these laws within the narrow parliamentary timetable. Furthermore, the inadequacy of opportunities and means on the floor of the House limited the ability of Parliament to fully

discharge its important duty to probe and check the administration of military personnel and expenditure in the Ministry of Defence.

The result of this lack of parliamentary surveillance on the operations of defence personnel was that most Zambia National Service camps were operating under difficulties owing to problems relating to inadequate facilities as a result of insufficient financial resources. The government, through the Ministry of Defence, had over the years failed to carry out necessary renovations to the infrastructure. This culminated in an outbreak of typhoid at the girls' Luamfumu Camp in Mansa. The investigation carried out by a government team of doctors into the causes of the typhoid outbreak found that:

“drinking water in the camp was not treated with chlorine, ablution blocks were insufficient and that it was important to quarantine the recruits for twenty-one days. The team, then, recommended that the camp be closed.”<sup>8</sup>

This outbreak of typhoid as a result of lack of resources and inhabitable conditions in these camps forced the government to suspend and later completely stop the compulsory National Service Programme for all Form V school leavers. The abandonment of this military service programme demonstrated the need for parliamentary oversight and began seriously to jeopardise the improvement in relations between the military and civilians that was previously experienced.

The continued declining economic situation in Zambia, characterised by heavy external debt amounting to US\$6 billion by 1991 and the problem of food shortages, seriously reduced the capacity of the Zambian government to support effectively its defence force in terms of competitive salaries and the provision of food and proper accommodation. Soldiers' loyalty to civilians and their government was therefore seriously compromised. The suffering that the people of Zambia went through alienated them from the principles of their party and of what the government stood for. As a result, four unsuccessful military coups d'état were attempted to try and remove the one-party state system of government from office.

The first attempted coup d'état occurred in 1976. The second took place in 1980 and involved a mixture of prominent Zambian military and civilian figures, such as the late Valentine Musakanya, a prominent businessman, Brigadier General Godfrey Miyanda and the then Chief Justice Anniefield. The third attempted coup took place in 1986 and involved prominent military officers including Lt. General Christon Tembo. The fourth and most dramatic attempted military coup, involving Lieutenant Mwaba Luchembe, took place in 1990. The 1990 attempted coup d'état is the one that broke the back of the then single ruling party, UNIP. This attempted military coup was supported by both civilians and military personnel across the whole strata of Zambian society. In

the aftermath of the attempted coup the party and its government appointed a research team whose terms of reference were to find out from the Zambian people through church leaders, labour leaders, army officers, traditional healers and UNIP leaders whether the one-party state should be maintained in Zambia or not. During the research – in which the author of this paper worked as a research officer – the people of Zambia through their leaders unanimously supported the abolishment of a one-party state and called for the re-introduction of a multiparty system of government. They argued that a ‘constitution-alised’ one-party state was contrary to basic human rights, for no generation had the right to make immutable decisions for future generations without any opposition. Zambians further stated that the freedom to vote for a political party of one’s choice and the freedoms of association, assembly and speech were fundamental rights. It also became clear that freedom only for the supporters of the government and for the members of the single party, however numerous they may be, was no freedom at all. They pointed out that freedom is undeniably also for those who think differently, and its essence vanishes when freedom becomes a special privilege. On the basis of the above factors the Zambian people recommended the:

- abolition of a one-party system of government and the re-introduction of a multiparty democracy;
- supremacy of Parliament over the ruling party;
- abolition of the state of emergency and arbitrary detention of people without trial; and
- limiting of the republican president’s term of office to two five-year terms.

The coups d’état and the results of the countrywide research pressurised the then President Kaunda to reintroduce multiparty democracy in Zambia by repealing article 4 of the Republican and UNIP constitutions, which forbade the formation of political parties other than UNIP.

President Kaunda managed to crush the attempted coups d’état by having centralised control over the civilian and military intelligence units in Zambia. This allowed the president in times of crisis, such as the attempted coups d’état, to play the last card since none of his adversaries or security officers knew all the security channels that were at his disposal. For instance, it was not until September 1995 that some of the security tunnels, alternative high frequency broadcasting stations and command-and-control centres were made public by the government under the Movement for Multi-Party Democracy (MMD). The attempted political neutralisation of high-ranking military leaders, who were imprisoned for treason by President Kaunda, now also came to an end with their unconditional release from prison.

The former coup leaders realised that the only way to remove Kaunda’s one-party state from government was through the electoral democratic process of one-person-one-vote. Together with their civilian counterparts in the Zambia

Congress of Trade Unions (ZCTU), church leaders and non-governmental organisations, they fought and struggled shoulder to shoulder until the one-party state was abolished and replaced by a multiparty democratic system of government on 31 October 1991, under President Chiluba.

### **Parliamentary oversight over defence expenditure 1991 to 2003**

Internationally this period marked the end of the Cold War between the Western capitalist states led by the United States and the communist states in the East led by the Soviet Union. This period also saw the collapse of the Soviet Union and its communist system and the abolition of apartheid in South Africa. The same period saw the abolishment of the one-party state system of government in Zambia by Parliament repealing article 4 of the Constitution and the re-introduction of the multiparty democratic system of government. All the countries surrounding Zambia which were previously under colonial regimes, such as Namibia, Zimbabwe, Angola and Mozambique, now attained majority rule. Since the country's sovereignty was no longer threatened by external and internal threats it became unnecessary for the executive to keep defence and intelligence budgets secret.

In addition, with the lifting of the state of public emergency in Zambia in February 1992, it also became unnecessary to keep a large army and therefore the government decided to introduce a programme for early retirement and retrenchment in both the defence and intelligence services. While these processes were being carried out Parliament also regained its control and functions over defence expenditure by now being allowed to debate and approve the defence allocation in the annual estimates of expenditure during the annual budgetary process. Furthermore, effective from 1992, the Public Accounts Committee of the Zambian Parliament has been considering reports by the auditor-general on defence expenditure. The first specific report of the Public Accounts Committee on Defence Expenditure was based on a Special Report of the auditor-general on the procurement of goods and services in the Zambia Army and Zambia Air Force for the period 1992 to 1998.<sup>9</sup>

The committee's report revealed many irregularities in the way the Ministry of Defence expended public resources as approved by Parliament. Some of these irregularities involved the following:

- Irregular purchase by the Zambia Army of 200,000 metres of African Print (chitenge) for which the Zambia Army paid K91,950,600 to Mulungushi Textiles of Zambia between April 1994 and March 1996. This print was diverted from the Central Ordnance Depot to the minister's residence. The report also reveals that there was no evidence that the commander-in-chief of the armed forces had approved the procurement and donation of the said materials. The consignment of materials to the MMD through the minister, a senior party official, undermined the implementation of the policy of

delinkage of party from government activities as the continuation of the same practice was bound to be costly to government.

- The committee also deplored the poor record-keeping in the army and called for immediate improvements in this regard. It concluded its investigations on this issue by directing the Ministry of Defence to recover the K91,950,600, to institute disciplinary action against all offenders involved in the purchase of the African Print materials and recommended improvements in record-keeping in the Zambia Army.<sup>10</sup>
- Irregularities in the purchase of uniform materials and tailoring of uniforms, the purchase of stable belts, leather belts and vehicles strikers, the procurement of tents and transport fleet, the involvement of a private company in defence procurements and other projects, the procurement of a VIP presidential aircraft as well as other irregularities in the supply of aircraft refurbishment and training services.<sup>11</sup>

The committee concluded its findings by deploring the practice whereby the Army Command considered itself as being above the law and therefore not obliged to adhere to financial regulations in their financial transactions. The committee directed that the above practice should cease forthwith and that the service commands be compelled to comply with all established procedures and regulations. It also directed the strengthening of the Ministerial Tender Committee through which all purchases should be channelled for appropriate scrutiny and advice before execution. The committee observed that the above parliamentary directives were necessary to avoid the negligence and loss of public resources that had been brought to the fore in the auditor-general's report. It further directed that all funds paid to suppliers were to be recovered immediately, especially where goods or services had not been received. In addition, the committee directed that immediate and stern disciplinary measures be taken against all officers and people involved in the irregular transactions leading to loss of public funds.

The committee also expressed its concern and recommended stern disciplinary action be taken against all officers from the Ministry of Finance and National Planning who connived with defence personnel in making irregular payments of public resources. The committee urged the Ministry of Finance and National Planning to re-establish open and cordial relations with the Ministry of Defence and to offer advice which would eventually improve the ministry's operations rather than be a party to financial irregularities. The committee concluded its findings by recommending the imposition of control over the financial operations of the services. It also strongly recommended that the Defence Act be reconsidered and amended to provide for a clear chain of authority in the handling of public funds in the services.<sup>12</sup>

It is clear from the foregoing that the Public Accounts Committee in the Zambian Parliament has now effectively taken responsibility to scrutinise how

money approved by Parliament is being expended by the Ministry of Defence through, among others, scrutiny of their annual reports.

In order to complement the role of the Public Accounts Committee in providing checks and balances to the executive in general and to the Ministry of Defence in particular, the Zambian Parliament in 1999 empowered the Committee on Foreign Affairs to offer checks and balances on policy matters. To this effect, the Committee on Foreign Affairs changed its name to the Committee on National Security and Foreign Affairs in order to incorporate the ministries of Defence and Home Affairs in providing checks and balances on policy matters, as oversight of expenditure is already done by the Public Accounts Committee.

To this effect the Speaker annually appoints members to the Committee on National Security and Foreign Affairs for one session. The duties of the committee are determined by the Speaker or any other orders of the House to oversee the ministries of Defence, Home Affairs and Foreign Affairs. In overseeing the activities of these ministries, the committee:

- studies, reports and makes recommendations to the government through the House on the mandate, management and operations of the ministries of Defence, Foreign Affairs and Home Affairs and departments and agencies under their portfolio;
- carries out detailed scrutiny of certain activities being undertaken by the ministries of Defence, Foreign Affairs and departments and agencies under their portfolio and makes appropriate recommendations to the House for ultimate consideration by the government;
- makes, if deemed necessary, recommendations to the government on the need to review certain policies and/or certain existing legislation;
- considers any bills that may be referred to them by the House; and
- undertakes tours of selected projects and security institutions to make on-the-spot examinations of their operations.

While on tour the committee is not allowed to accept gifts given to members during their normal course of duty. This measure enables members to avoid compromising the work of the committee. The appointment of members to this committee takes into consideration:

- the constitutional obligation to have representation of all parties on the committee as in the House;
- gender sensitivity in terms of balance and representation; and
- members' qualifications, experience and preferences.

As stated earlier and looking at the terms of reference above, the Committee on National Security and Foreign Affairs provides checks and balances on policy matters, while oversight of defence expenditure is done by the Public Accounts Committee. When during its investigations the Committee on National Security

and Foreign Affairs comes across financial irregularities in the Ministry of Defence, it refers these to the Public Accounts Committee for further scrutiny. The mandate of the Public Accounts Committee is to examine the accounts showing the appropriation of sums granted by the National Assembly to meet public expenditure, to consider the auditor-general's report on the accounts of the Republic of Zambia and to exercise powers conferred on them under article 103(5) of the Zambian Constitution. Among the topics considered by the Committee on National Security and Foreign Affairs are the status of Zambia's international boundaries with her neighbours, Zambian troops serving on UN peace-keeping operations, Zambia's security concerns and their impact on foreign policy and the welfare of defence personnel.

Despite the Committee on National Security and Foreign Affairs and the Public Accounts Committee providing checks and balances on defence policy and expenditure, the two committees have, however, never been involved in defence pre-budget consultations, which is a very important component in budget formulation. Even when the defence budget is presented to Parliament for scrutiny and approval, it is never referred to the two committees for comment or input.

While the foregoing arrangements have assisted in the provision of checks and balances to defence expenditure and policy, the two committees have no powers to scrutinise the operations of the defence service as it is considered a threat to national security. The committees also have no mandate to scrutinise the operation of the intelligence wing and this has led to a popular perception that the intelligence services have abused their mandate. There is therefore a need to keep these service organisations in check by the two committees in order to restore the trust of the citizenry. It is in this light that the government's announcement on 10 January 2003, through the Minister of Finance and National Planning, that the government had directed the Director of Public Prosecutions to proceed with the prosecution of all those named in the 16 Public Accounts Committee's reports approved by Parliament for misappropriation of public funds, should be welcomed.<sup>13</sup>

## **Conclusion**

Parliamentary oversight of the military in Zambia since independence in 1964 has gone through phases corresponding with the country's Three Republics. In the First Republic, from 1964 to 1971, the emphasis was on building a new military within the motto of 'One Zambia, One Nation'. This led to the creation of the Zambian Defence Force and to a legislative framework that harmonised relations between the military and civilian communities. However, threats to Zambia's security emanating from regional minority regimes led to the imposition of emergency powers and secrecy in the management of national defence. In the Second Republic, Zambia became a one-party state and this

further diminished democratic parliamentary control of the military. Whereas before 1973 there were a number of democratic mechanisms, both formal and otherwise, that placed government executive and its policies under the magnifying glass, Parliament alone now played this role. The lack of parliamentary oversight and civil control, coupled with the declining economic situation in Zambia, caused the deterioration of the efficiency and professionalism of the defence force and led to four attempted military coups d'état. Although these were successfully suppressed they contributed to the ending of one-party rule. In 1992 after the re-establishment of democracy, Parliament regained some of its control and oversight over defence. The Public Accounts Committee was empowered to debate and approve the defence allocation and to consider reports of the auditor-general on defence expenditure. The Committee on National Security and Foreign Affairs was empowered to provide checks and balances on policy matters and defence legislation. Nonetheless, the oversight powers of these committees exclude pre-budget consultation, scrutiny of operations and intelligence. Given the developments regarding collective security in the Southern African Development Community region, the need for more confidence- and security-building measures both nationally and regionally and the need for greater transparency and accountability in defence management to ensure effectiveness and efficiency, it is perhaps time that these limitations on parliamentary oversight be reviewed.

## Notes

- 1 D Chuter, *Defence transformation: A short guide to the issues*, ISS Monograph No 49, Pretoria, 2000, p 27.
- 2 The Constitution of Zambia Act, 1996, article 100.
- 3 The Defence Act, Chapter 131 of the Laws of Zambia, September 1964, p 12.
- 4 The Emergency Powers Act, Chapter 108 of the Laws of Zambia, October 1964, p 3.
- 5 Ibid, article 3(1), p 3.
- 6 Ibid, article 3(2), p 3
- 7 N Thompson, *Parliamentary oversight of the security sector in the Commonwealth*, Commonwealth Policy Studies, London, 2000, pp 2, 12.
- 8 *Times of Zambia*, 25 March 1981.
- 9 Government of the Republic of Zambia, *Report of the Auditor-General of goods and services in the Zambia Army and Zambia Air Force in the period from 1992 to 31 December 1999*, Lusaka, Government Printers, 2001.
- 10 Ibid, pp 4-6.
- 11 Ibid, pp 7-29.
- 12 Ibid, pp 30-31.
- 13 *Saturday Post*, No. 2278SA58:1.

# ACCOUNTABILITY AND OVERSIGHT: THE ROLE OF PARLIAMENT IN ARMS TRANSFERS

Clarence Tshitereke

## Introduction

“An estimated 50 to 60 per cent of the world’s trade in small arms is legal – but legally exported weapons often find their way into the illicit market. The task of effective proliferation control is made far harder than it needs to be because of irresponsible behaviour on the part of some states and lack of capacity by others, together with the shroud of secrecy that veils much of the arms trade. Member States must act to increase transparency in arms transfers if we are to make any progress.”

– UN Secretary General Kofi Annan, 2000<sup>1</sup>

There is a need to regulate arms transfers, especially in the developing world. As more countries implement unilateral control measures to regulate the flow of arms, they set standards according to which others will be measured. Regarding conventional arms transfers, the major problem seems to be with small arms since they are easy to conceal and therefore difficult to identify or verify independently – especially when compared to exports of major conventional weapons such as warships, tanks or aircraft.<sup>2</sup> Moreover, the transfers of small arms usually consist of minor consignments and may sometimes only involve ammunition, which makes it easier to ignore even registering these exports.

While those who sell arms claim to have clear policy guidelines and responsibilities for determining the eligibility of foreign governments, their governments have in many instances authorised the sale of arms even when the recipient country did not meet prescribed requirements. For Africa in particular where the problem of small arms is more serious, this presents a real need for parliaments to scrutinise arms transfers as they have a direct impact on peace. For the United States (US) government, arms can only be sold to a country whose government promotes democracy and such a government must: have been chosen by the people; permit free and fair elections; promote civilian control of the military and security forces; and have civilian institutions

controlling the policy, operation and spending of all law enforcement and security institutions, as well as the armed forces. The recipient government must also promote the rule of law and respect for individual and minority rights, including freedom to speak, publish, associate and organise.<sup>3</sup>

A meaningful democracy requires the existence of appropriate institutions and the prospects for their institutionalisation in different cultural settings to realise its aspirations. If this prerequisite is not properly met, democracy is deprived of its real meaning. Instead, guided *democracies* in which leaders with consummate skill manage to hold elections and serve long terms in office will emerge. It is widely acknowledged that this reality has derailed Africa from its economic path and progress. However, parliaments hold the power to reverse this trend, where necessary by making new laws or changing existing ones consistent with new initiatives of the African Union (AU) and the New Partnership of Africa's Development (NEPAD), which emphasises good governance through effective institutions. This paper, which uses South Africa as a case study, seeks to dissect the role of parliament in some of these intricacies, focusing on oversight and accountability on conventional arms transfers. It also seeks to illustrate how parliamentarians can take a more active role in the executive process by explaining the role of parliament in the arms trade.

### **The need for arms and patterns of trade in Africa**

“With many sovereign states, with no system of law enforceable among them, with each state judging its grievances and ambitions according to the dictates of its own reason or desire – conflict, sometimes leading to war is bound to occur. Any state may at any time use force; therefore, all states must constantly be ready either to counter force with force or to pay the cost of weakness.”<sup>4</sup>

According to Waltz's analysis of the structural realist paradigm, the international system is the means to understanding international conflict. Advocates of arms transfers have consistently made the point that all states enjoy the right of self-defence under the United Nations (UN) Charter. Further, the denial of weapons to a country under threat of invasion, or to a community subject to genocide, can amount to complicity in acts of aggression.<sup>5</sup> This reality has increased arms sales to the developing world, and contemporary international trends show that this will continue.

While acknowledging the right of every government to acquire arms to equip itself against acts of aggression and to safeguard its people, there is equally a need for parliamentary scrutiny and oversight in three areas, namely: imports, exports and the manufacture of weapons. The process of decision making over these three elements has to be explicitly spelled out and should

also involve the public. For those countries in Africa that produce weapons, even ammunition, the procedure used to sell these products needs to be made explicit. Arms production necessitates a degree of responsibility on the part of producers so that weapons do not end up in the wrong hands. It is in this role that parliament should regulate arms transfers and enhance democratic civil–military relations as:

- the state is the only actor in society that has the legitimate monopoly of force;
- the security services are accountable to the legitimate democratic authorities;
- parliament is sovereign and holds the executive accountable for the development, implementation and review of security and defence policy; and
- principles of good governance and the rule of law apply to all branches of government and therefore to arms sales and purchases.

International arms transfers are difficult to trace, especially if governments neither publish their exports nor report to the UN Arms Register. This reality has made patterns of arms trade in Africa, at best, complicated. Small arms present a serious problem and many of these are sold to rebel organisations by most international arms manufacturers. Governments of the arms-providing companies should know and may wittingly approve such transactions.<sup>6</sup> In instances where some countries were accused of this complicity, they have often hidden behind the veil of their companies' unscrupulousness.

The fact that international organisations are not designed, or at least do not have the capacity, to deal with non-state actors such as rebel groups exacerbates not only arms proliferation to these groups but war itself. For instance, this reality has made it more complicated to deal with internecine strife as rebel groups (and more recently terrorist groups) have easy access to funds and are not accountable to anyone. A rather undesirable additional complement is that arms transfers are first and foremost, commercial transactions shrouded in the premier echelon of secrecy. However, it is a parliamentary responsibility to publicise and shame those who provide military assistance to such organisations. Although this may undermine a community's aspirations for self-determination, it may encourage dialogue and thus a better alternative to war.

Arms producing nations of the world are finding it hard in terms of their domestic politics to curtail production of weaponry in excess of levels needed for their own armed forces. Surplus weaponry is thus exported for cash revenue, which surpasses most other industries. While the trend has declined with the end of the Cold War it, however, opened avenues for others. Currently China now has 21% of the African market, Russia has 18% and Western Europe, including the United Kingdom (UK) and France, has 14%.<sup>7</sup> Most obvious, the military industrial complex is a very powerful subset of any nation with its benefit from weapons sales abroad. Arms contractors have consistently argued

that arms are essential to foster good relations as well as to create more jobs at home. The arms lobby works assiduously to ensure that foreign sales continue apace and foreign lobbyists diligently ensure that their countries get the weapons they want.

## **Challenges**

The challenge in implementing parliamentary scrutiny is that it requires political systems to be democratic. This begs the question: What happens when an undemocratic country produces weapons and sells them or, as has happened in many instances, when a recipient country is undemocratic? Even when the producing country is democratic, the nature of internal arrangements within its polity may challenge the very fabric of democracy. For instance, where a democratic system uses proportional representation for its electoral system, parliamentarians who make up the committee may listen more to the wishes of party leaders if that would guarantee their return to parliament in the next election and their ranking within the party list. However, since politicians are public representatives, they have a responsibility to behave in accordance with the wishes and dreams of their constituency.

Be that as it may, the more governments adopt transparency as a means of curbing the dangerous proliferation of arms, the more effective transparency becomes. While few African countries produce arms, it is important that parliaments adopt strong positions regarding legislation to regulate arms transfers and decisions regarding what needs to be done with old and surplus weapons, that is, whether they are to be sold or destroyed. Through these initiatives, parliamentarians can make a real and direct contribution towards strengthening democracy and addressing the humanitarian and criminal damage enabled by arms transfers. The cost and efforts of implementing these recommendations will undoubtedly be overshadowed by the humanitarian and financial costs of failing to address the problem of arms transfers.

## **Parliament: What role in conventional arms transfers?**

Former French Prime Minister Georges Clemenceau once stated that: "War is a much too serious matter to be entrusted to the military".<sup>8</sup> This statement recalls that in a democracy, the representatives of the people hold supreme power and no sector of the state should be excluded from their control. A democratic state without legislature's control of its security sector, especially the military, should at best be deemed an unfinished democracy or a democracy in the making. In an ideal world, the legislature should have a role to play in a country's arms procurement process for purposes of transparency and accountability to the public. Regrettably, in most countries the legislature has a limited role in arms sales and procurement.

In carrying out its task, whether by implementing legislation or policy, the executive requires considerable powers. A condition of the exercise of that power in a constitutional democracy is that the executive is checked and held accountable to an organ of government distinct from it. This oversight function is normally exercised by the legislature over the executive. The notion is inherent in the concept of the separation of powers, which simultaneously provides for checks and balances on the exercise of executive authority, making the executive more accountable to an elected legislature.

*Accountability* means 'to give an account' of actions or policies, or 'to account for' spending and so forth. Accountability can be said to require a person to explain and justify – against criteria of some kind – their decisions or actions. It also requires that the person goes on to make amends for any fault or error and takes steps to prevent its recurrence in the future.

*Oversight* refers to the crucial role of legislature in monitoring and reviewing the actions of the executive organs of government. The term refers to a large number of activities carried out by the legislature in relation to the executive. In other words, oversight traverses a far wider range of activity than does the concept of accountability.

In the past decade, there has been a growing clamour for governments and their parliaments in particular to exercise their oversight and accountability functions in regulating arms sales and to report and declare what and to whom they have sold or received. There is an obvious oversight role for parliament to play as public funds are involved. It therefore could be viewed as a parliamentary responsibility to decide whether money should be spent on 'guns or butter', and if it is to be spent on 'guns', then which 'guns', how much and why? The motivation is for parliamentary oversight to balance the costs of arms expenditure against social sector needs. In essence, the legislature should monitor the increasing military expenditure. More importantly, a proper parliamentary oversight on arms procurement may reduce the danger of the regional arms procurement spiral.<sup>9</sup> Assessing the needs for weapons procurement requires a comprehensive decision-making process on procurement through:

- threat assessment processes;
- the long-term concept of defence capacity-building/identification of material needs for new equipment;
- budget allocations for arms procurement;
- technical quality assurance and post-procurement performance audit processes; and
- assessing offers for compensation and off-set.

This need for transparency and accountability has acquired added importance in the contemporary era as the international community beefs up its fight against terrorism. One of the problems in dealing with conventional arms has

been how to deal with the situation of a free market in trading weapons of all kinds when it is in fact a commercial business. At the international level, this has been achieved through a universal and non-discriminatory Register of Conventional Arms at the UN in New York, to include data on international arms transfers as well as information provided by member states on military holdings, procurement through national production and relevant policies.<sup>10</sup>

Still, arms trade remains puzzling and weapons have continued to reassert their retrograde influence on humanity. The problem has been that the criteria most countries use in determining arms sales is usually trumped by strategic and commercial interests. In line with this, a country may sell arms to another in order to offset the balance of power in a particular region. Parliamentary scrutiny of such transactions that run contrary to a government's agenda is unthinkable.

Intrinsically, incentives to sell arms are largely encouraged by economic interests and may also be politically motivated. Inevitably, this creates the risk that governments will seek to define criteria such as human rights abuses as narrowly as possible (or as narrowly as they feel they can get away with) in order to smooth the passage of an arms transfer. A system of prior parliamentary scrutiny and openness regarding the export licence process is the only avenue through which public interest can monitor and influence decisions before they are made – and before all arms are delivered.<sup>11</sup>

To be successful, this initiative may require the existence of effective political opposition and a vibrant civil society that would spawn debates on the subject. The associational sphere of civil society is seen as the place where citizens learn habits of free assembly, dialogue and social initiative. When engaged properly without intimidation, civil society can help to bring about that delicate balance of private interests and public concern vital for a democracy as it evokes images of freedom to speak and associate without fear. It also conjures up images of a public life in which the words and actions of ordinary citizens are duly acknowledged by the state.

A combination of parliamentary scrutiny and a vibrant civil society in regulating arms sales would ensure that both citizens of arms-exporting countries and those in importing countries benefit from a regime of transparency around the international trade in arms transfers. The benefits of such a regime would:

- encourage restraint in arms transfers to actors that use them in the commission of human rights violations and armed conflict;
- enhance good governance by curbing corruption and increasing democratic accountability;
- promote the norm of transparency to states that do not yet provide meaningful information about their arms shipments; and
- enable better understanding of the arms trade and its relationship to armed violence.

According to Haug et al, certain basic principles which form the minimum criteria for full transparency prior scrutiny cut across national boundaries. At the parliamentary level, the establishment of a defence oversight committee under the following principles would ensure that governments are fully accountable for their actions.

- *The committee's proceedings should not be secret.* This requirement should apply to the committees' findings, deliberations and evidence. Open hearings would allow the public to be informed on government policy, enabling debates and examination of the issue outside, as well as inside, parliament. Interested parties would then be able to influence public opinion – and the committee – before a decision is made. In rare cases where there is good reason to keep evidence submitted to the committee secret, the committee should have competence to make this decision.
- *The parliamentary committee should be permanent.* Permanence would allow individual parliamentarians to build up expertise on the issue. Furthermore, the committee should be adequately provided with support staff.<sup>12</sup>
- *A wide range of political opinions should be represented.* Committee members should be drawn from a number of political parties and should reflect the broad political spectrum in parliament. It is also important that members of the committee should not be dominated by trade interests. This requirement would ensure that governments would be subject to some challenge within the committee, and that the public would become aware of the record of each political party's representative(s).
- *The committee should decide which licence to examine.* For the arms exporting countries, the committee should be informed of all potential transfers of defence goods to other countries and imports and should be free to examine any of them in detail. While it may well establish ground rules, such as not reviewing transfers to allied states, the existence of a (pre-defined) monetary thresholds (such as in the US) creates the potential or risk that the committee will simply not be informed of important transfers.
- *A large number of outside organisations should be consulted.* The committee should be able to consult non-political expert groups – such as the defence establishment, manufacturers and human rights organisations – for information and advice.
- *The committee should have adequate time to reach its decisions.* While it would be expected that the committee should take into account commercial sensitivities, the committee should decide what amount of time is required for each case. While it could also be argued that the committee should have the power to block any licence application it objects to, the ability of the committee to make decisions is not a prerequisite of transparency *per se*. The primary role of a committee is to make ministers accountable for their decisions, rather than to take that responsibility from them.

### **The South African experience: A case study**

“Our morality as a democratic government dictates that we have to act in accordance with internationally accepted norms and standards ... in our approach to the sale of arms we are resolved to act responsibly. Arms are for the purpose of defending the sovereignty and territorial integrity of a country not to undermine any considerations of humanity or to suppress the legitimate aspirations of any community” Nelson Mandela, 1994.

During the 1980s South Africa was one of the top arms exporters in the world, and is still prominent. During the apartheid era, South Africa sold arms to human rights violators’ making its arms industry and nuclear capabilities the subject of heated debates throughout the political interregnum of the 1990s. Human Rights Watch noted in its 2000 report the controversies over South African arms deals with abusive governments and countries in conflict: the “disturbing record of arms sales since April 1994 has fed the perception, domestically and internationally, that the ANC [African National Congress] government’s foreign policy is haphazard and that South Africa has failed to become a restrained and responsible arms trader.”<sup>13</sup> Internationally, the South African government was urged to address the inconsistencies that emerged between its arms export policies and practices. South Africa is a well-respected and increasingly influential developing country that is growing in stature. It has much influence in Africa through its prominence in the AU and NEPAD. In light of these, its use and exports of arms are of particular interest.

In response to the growing concern over the destination of South Africa’s arms exports, the new government committed itself to principles of transparency in conventional arms transfers. These transparency measures ensure that government and citizens have access to data on arms transfers, which facilitates greater understanding of the trade. In this vein, remarkable progress has been made in adopting a set of guidelines to regulate the country’s arms trade consistent with new democratic creeds and international responsibility. This initiative commenced with the establishment of a Cabinet level committee, the National Conventional Arms Control Committee (NCACC) to be responsible for the approval of all South Africa’s arms transfers. The NCACC consists of ministers appointed by the president to carry out the government’s policy on arms control and to ensure political oversight over all arms transfers. The committee is chaired by a minister who does not have a line function interest in trade in conventional arms. The committee operates on the basis of consensus but the minister of defence is responsible for issuing export permits once these have been agreed.

The South African government has instituted a certain rationale and principles for the NCACC to regulate the trade in conventional arms. These

principles are in common with internationally accepted norms relating to the transfer of conventional arms. In deciding whether to authorise the transfer of conventional arms and related technologies, the NCACC considers the following regarding a recipient country:

- The respect showed for human rights and fundamental freedoms. The NCACC determines this from an evaluation based on the UN Universal Declaration of Human Rights and the African Charter on Human Rights and People's Rights. Instances where political, social, cultural, religious and legal rights are seriously and systematically violated by the authorities of that country are considered very critically.
- The internal and regional security situation of the country, taking into consideration existing tensions or armed conflicts.
- The record of compliance regarding international arms control agreements and treaties.
- The nature and cost of the arms to be transferred in relation to prevailing circumstances, including justified security and defence needs and the objective of the least diversion of human and economic resources for armaments.
- Whether such arms sales support South Africa's national and foreign interests.

Like other arms exporting countries, export applications are considered after a meticulous scrutiny of the recipient country's human rights and compliance with international arms protocols. In essence, it is South Africa's policy not to sell arms to countries that are not consistent with these requirements. For instance, in August 1997 the South African government decided to block a potentially lucrative sale of Rooivalk attack helicopters to Turkey because of Turkey's poor human rights record towards its Kurdish minority, and because of Turkey's continued occupation of part of Cyprus in defiance of international law.

However, following an announcement of prospective arms sales to Syria, the US government voiced its concern as it regards Syria as a terrorist state and threatened to suspend aid to South Africa. ANC parliamentarians (at committee level and in the House in general) rejected US attempts to impose its definition of terrorism on South Africa and Cabinet ministers similarly denounced Washington's 'bullying tactics'.<sup>14</sup> They insisted that South Africa, as a sovereign state, was free to choose to whom it exports arms.<sup>15</sup> As Deputy Minister Essop Pahad bluntly put it in early 1997:

"Who says Syria is a terrorist country? It is a matter of interpretation. Our assessment of human rights [in Syria] can't be determined by an Amnesty International report. We have our own criteria."<sup>16</sup>

The extent to which the NCACC is accountable to Parliament remains questionable as decisions are taken at Cabinet level and Parliament is only informed once a decision has been taken. While the public may have access to data on conventional arms transfers through the Access to Information Act, requests of this nature are often difficult to secure as they can be classified national security. Still, the new government demonstrated its commitment to openness and transparency by making its data on arms exports public. In 1996 the Directorate Conventional Arms Control published its first report on arms transfers. The report published in March 2000 for exports made in 1999 included:

- an overview of the authorities responsible for assessing and granting arms export licences;
- a list of the international arms control regimes that South Africa has acceded to;
- the rationale and principles governing South African arms exports;
- a summary of the laws and procedures governing production and export of weapons;
- an explanation of the different weapons categories referred to in the export statistics; and
- arms export statistics for the period 1997–99.

Establishing exactly what was sold from the report is, however, tricky due to insufficient explanations on how the Directorate Conventional Arms Control collects the data from exporters and derives the report. Moreover, the report does not name the arms exporting producers nor does it include any information on licences granted or end-users. Furthermore, the broad categories into which weapons are broken down make any detailed analysis of South African arms exports impossible. However, there seems to be room for improving on

**Table 1: South African arms export report, 1997–99 showing the value of particular categories of weapons exported by country<sup>17</sup>**

	<i>Category</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
Guatemala	B			950,000
India	A	572,225,000	7,324,000	205,047,000
	C	28,293,000	5,978,000	
Indonesia	C		2,597,000	
Ireland	A	4,487,000	2,334,000	13,449,000
	B	74,000	33,000	
	C	329,000		241,000
	D		1,036,000	
Israel	A	1,207,000	414,000	909,000
	B	22,796,000	2,106,000	534,000
	C	2,160,000	3,297,000	8,660,000

**Table 2: Export totals for 2000 and 2001 rounded to the nearest thousand rands**

	2000	2001
Category A	841,919,000	990,047,000
Category B	70,811,000	81,068,000
Category C	304,022,000	591,872,000
Category D	62,106,000	30,719,000
Category G	105,711,000	42,866,000
Totals	1,384,569,000	1,736,572,000

some of these weaknesses; for instance, the 2002 report does mention end-users of military equipments exported. Export totals for the years 2000 and 2001 rounded to the nearest thousand rands are shown in Table 2. South African military exports for the year 2002 are shown in Table 3.

The NCACC reserves the right to cancel licences. It may exercise this function if:

- any condition of the permit has not been or is not being complied with;
- the person who has been issued the permit is convicted of an offence in terms of the NCACC Act;

**Table 3: South African military exports for 2002**

A	B	C	Remarks	
Category (I-VII)	Final importer state(s)	No. of items	Description of item	Comments on the transfer
	Angola	1	Casspir APC vehicle(refurbished)	End user: Norwegian People's Aid
	Eritrea	2	SAMIL20 Mine Protected Vehicle (refurbished)	End User: United Nations
	Mali	5	RG31 Mine Protected APC	
	United Kingdom	3	RG32 SCOUT APC	End User: Alvis UK
	Uganda	15	RG 31 Mine Protected APC	Delivery on outstanding 1998 order. For internal use only
	Belgium	1	Armoured Car: Eland Mk7 90mm	End User: SABILEX; Short shipment on 1999 export

**Table 3: South African military exports for 2002 (continued)**

<i>A</i>	<i>B</i>	<i>C</i>	<i>Remarks</i>	
<i>Category (I-VII)</i>	<i>Final importer state(s)</i>	<i>No. of items</i>	<i>Description of item</i>	<i>Comments on the transfer</i>
	Austria	1	RG32 SCOUT APC	
	Mozambique	6	4xSAMIL20: Mine Protected Vehicle 2x Casspir APC (Refurbished)	End User: Norweggian People's Aid
	Georgia	2	RG32 SCOUT APC	End User: UN
	France	2	RG32 SCOUT APC	
	Malaysia	22	G5 Howitzer 155mm Towed	10 exported in September 2001, 12 exported in July 2002
	Cameroon	1	Impala Mk2	Old surplus stock

Of these weapons, category A = sensitive major significant equipment; category B = sensitive significant equipment; category C = non-sensitive equipment; category D = general service; and category G = general services.

\*Note that most of the equipment sold in the year 2002 consisted of used but refurbished equipment, for instance, the Casspir, SAMIL20 and the Impala Mk2. Thus there is a role for parliament to play regarding old stocks of military hardware.

- it is in the interest of the protection of the security of the Republic; or
- it is in the interest of maintaining and promoting international peace or avoiding repression and terrorism.<sup>18</sup>

### **The role of Parliament in legislation, exports and procurements**

While South Africa has a well-established arms industry, this does not render the country self-sufficient. As a result, South Africa acquires a significant percentage of its military hardware from other countries. The acquisition of arms is hard to conceal as the process involves a fair degree of consultation and tendering and has to be approved by Parliament and other organs of state.

What is important is that Parliament makes laws after a lengthy consultative process. The minister responsible appoints a task team to investigate/research the issue and to draft a Green Paper, which is a consultative document designed to provoke responses from interested parties that might be affected by the proposals. The department concerned considers these responses and they

influence the final policy proposals, which are agreed by the minister and sometimes by Cabinet. Although ministers and departments do their own consultations on Green and White papers, sometimes a parliamentary committee may also conduct public hearings or consultations.

In this regard, Parliament has played a significant role in laying the foundations of national policy through the White Paper on the South African Defence Related Industries. Legislation covering these industries consists of the Regulation of Foreign Military Assistance Act of 1998 and the National Conventional Arms Control Act of 2002. Legislation passed by Parliament laid down the following organisational structure involved in the acquisition of armaments for the SANDF:

- The military component consisting of the chief of the SANDF and the arms of service that are mainly the clients of products to be acquired.
- The civilian component consisting of the secretary for defence, the chief of acquisition and the chief of policy and planning.
- The minister of defence and his/her department, Cabinet and Parliament itself.
- The Armaments Corporation of South Africa (Armscor) – established in terms of the provisions of the Armaments Development and Production Act, 1968 and its core business is to acquire and produce defence material and related services for the Department of Defence.<sup>19</sup>

Parliament analyses consistency of procurements with the security policy and assesses the financial burden of such purchases in comparison with other public needs and social priorities. For instance, Parliament exercised this function in the recent strategic defence package through the Standing Committee on Public Accounts (SCOPA). Although the investigation proved the strong executive–weak Parliament dilemma, Parliament fulfilled its functions. As the former chair of the committee remarked:

“As a result of my trying to have SCOPA properly investigate the R60 odd billion arms deal, I was blocked and undermined by everyone from the Deputy President, Cabinet ministers, the Speaker of Parliament to the majority of members in the Committee – and with little effective support from the media, the business community or any other part of civil society, I became isolated to the point where I had no option but to resign as chairman.”<sup>20</sup>

Despite the powers vested in the committee, it was difficult to unearth issues relating to alleged securities and corruption. Be that as it may, lessons learned from the experience of this transaction are that South Africa should beef up its policy on arms trade and transfers to close the existing loopholes.

## Conclusions and recommendations

This paper sought to highlight the importance of parliamentary oversight and accountability over arms transfers and procurements. There is a need to establish independent auditing procedures with statutory powers, to ensure that national arms sales processes are subject to autonomous scrutiny and oversight. There are just as many examples from which to draw lessons, for instance, the European code of conduct on arms transfer and the Organisation of American States code of conduct for arms transfers. All these codes give legislature the power to investigate any military transfer and to ascertain if these are consistent with the promotion of human rights and democracy.

While Africa is not a major producer of arms, it is in Africa where weapons, especially light weapons, kill more people every year. The capacity to produce ammunition for small calibre weapons exists in many African countries. In the epigraph to this paper, the UN Secretary General highlights the dangers posed by arms and the difficulties in regulating arms transfers. It is for the reasons mentioned above that:

- parliamentary oversight of arms procurement needs to be legislated;
- parliamentarians should demand that parliament has a say in the process of arms and military equipment procurement;
- parliament should conduct post-procurement performance audits of weapons systems, after the contract has been implemented;
- parliamentarians should also make sure that they are able to access and to utilise expert advice; and
- parliaments also encourage participation in transparency measures, for instance, by encouraging reports to the UN arms register.

Left unregulated, it is the ammunition that renders guns useful. There is a need for parliaments to establish and institute a robust authority endowed with sufficient legal power to supervise, verify and investigate and if necessary institute legal proceedings to improve the business of arms transfers which is shrouded in secrecy. Until parliaments commit themselves and exercise this function, the detrimental impact of arms within Africa will remain. In conclusion, echoing the UN Secretary General's words, "Member States must act to increase transparency in arms transfers if we are to make any progress".<sup>21</sup>

## Notes

- 1 K Annan. *We the Peoples: The role of the United Nations in the 21st Century*, United Nations, New York, 2000.
- 2 See M Haug et al, *Shining a light on small arms exports: The record of state transparency*. A joint publication of the Small Arms Survey and the Norwegian Initiative on Small Arms Transfer, 2002, p 25.

- 3 See the US Code of Conduct of Arms Transfers Act of 1997.
- 4 K Waltz, *Man, the state and war: A theoretical analysis*, University Presses of California, Columbia and Princeton, New York, 1979, pp 159-160.
- 5 L Nathan, A human rights perspective on arms sales to the Middle East, Paper prepared for the meeting on South African Arms Sales to the Middle East, Department of Foreign Affairs, Pretoria, 16 October 1997.
- 6 Notwithstanding the clamour and pressures from the West for the developing world to democratise, at least with their governments' tacit approval, they have concluded numerous transactions. For instance, in April 1997 Laurent Kabila signed a US\$885 million contract with American Mining Fields, a US firm intent on exploiting Congolese copper, cobalt and zinc. See M Ross, How does natural resource wealth influence civil war? Unpublished paper, Department of Political Science, University of California, Los Angeles, 2001, p 20.
- 7 See <<http://www.clw/atop/media/cnntv021600.html>>
- 8 See Parliamentary oversight of the security sector: Principles, mechanisms and practices, Geneva Centre for the Democratic Control of Armed Forces and the Inter-Parliamentary Union, Geneva and Belgrade, 2003, pp 18-19.
- 9 See *Ibid*, p 173.
- 10 See <<http://disarmament.un.org/cab/register.html>>.
- 11 See Haug, *op cit*, p 42.
- 12 In a presentation to the South African Institute of Race Relations, former chair of the South African parliamentary Standing Committee on Public Accounts, G Woods, pointed out that "the committee is seriously incapacitated and relies heavily and improperly on the Auditor General's office to carry it through superficial motions of promoting sound public finance management", 12 June 2002.
- 13 See , South Africa: A question of principle, arms trade and human rights, *Human Rights Watch* 12(5), 2000.
- 14 On 16 January 1997 *The Star*, a major Johannesburg newspaper, ran an article titled 'Mandela Says SA Will Not Bow to US'.
- 15 *Ibid*.
- 16 Nathan, *op cit*.
- 17 All figures are rounded to the nearest R1,000.
- 18 See the National Conventional Arms Control Act, 41 2002, *Government Gazette*, Pretoria.
- 19 In addition to these functions, Armscor also has to participate in the drafting of value systems and, amongst others, the provision of a system for tender management, evaluation and adjudication.
- 20 Woods, *op cit*.
- 21 Annan, *op cit*.

# CHALLENGES FOR DEFENCE MANAGEMENT IN AFRICA

Len Le Roux

## Introduction

Management is principally concerned with the efficient use of resources in order to achieve desired outcomes. In the case of public sector management the taxpaying public supplies the resources and they should therefore also have a say in the outcomes that they desire and the process by which this is achieved. Obviously there is a limit to how involved individuals can get in bureaucratic processes and it is for this reason that in democratic societies representatives are elected to take responsibility for the management of the state on their behalf. The overall responsibility for the formulation of policy, for the planning and budgeting to achieve such policies, for overseeing the execution of these plans and for exercising strategic control therefore rests with parliament.

Defence is one of the sectors of government and defence management should therefore be equally accountable to parliament and subject to parliamentary oversight and control. National defence policy should be developed in as consultative and open a way as possible and should be approved by parliament. Defence planning, programming and budgeting should equally be done in a transparent manner and approved by parliament. Civil authority must monitor the execution of defence activities and ensure effective strategic control over defence management.

The argument is often made that defence is a sensitive subject and requires special treatment and greater confidentiality. This argument is correct, but the question remains: Who decides on what is confidential and what not? The answer is simple. Parliament, through legislation, determines the extent of acceptable defence confidentiality and the procedures for exercising oversight of the defence function.

Yet, defence management is not only about control and oversight. It is equally important that defence management pursues effectiveness, efficiency and professionalism in the execution of its functions and at the same time aligns the defence sector with the cultural values and norms of the society that it serves.

This paper aims to explore the challenges for defence management in Africa

and to provide an insight into some best practices to serve as examples for regional states in the process of transforming their defence establishments to democratic norms. The paper rests heavily on the South African example.

### **A conceptual framework for defence management**

As stated in the introduction, management is principally concerned with the efficient use of resources in order to achieve desired outcomes. In the case of defence the required outcomes or outputs are:

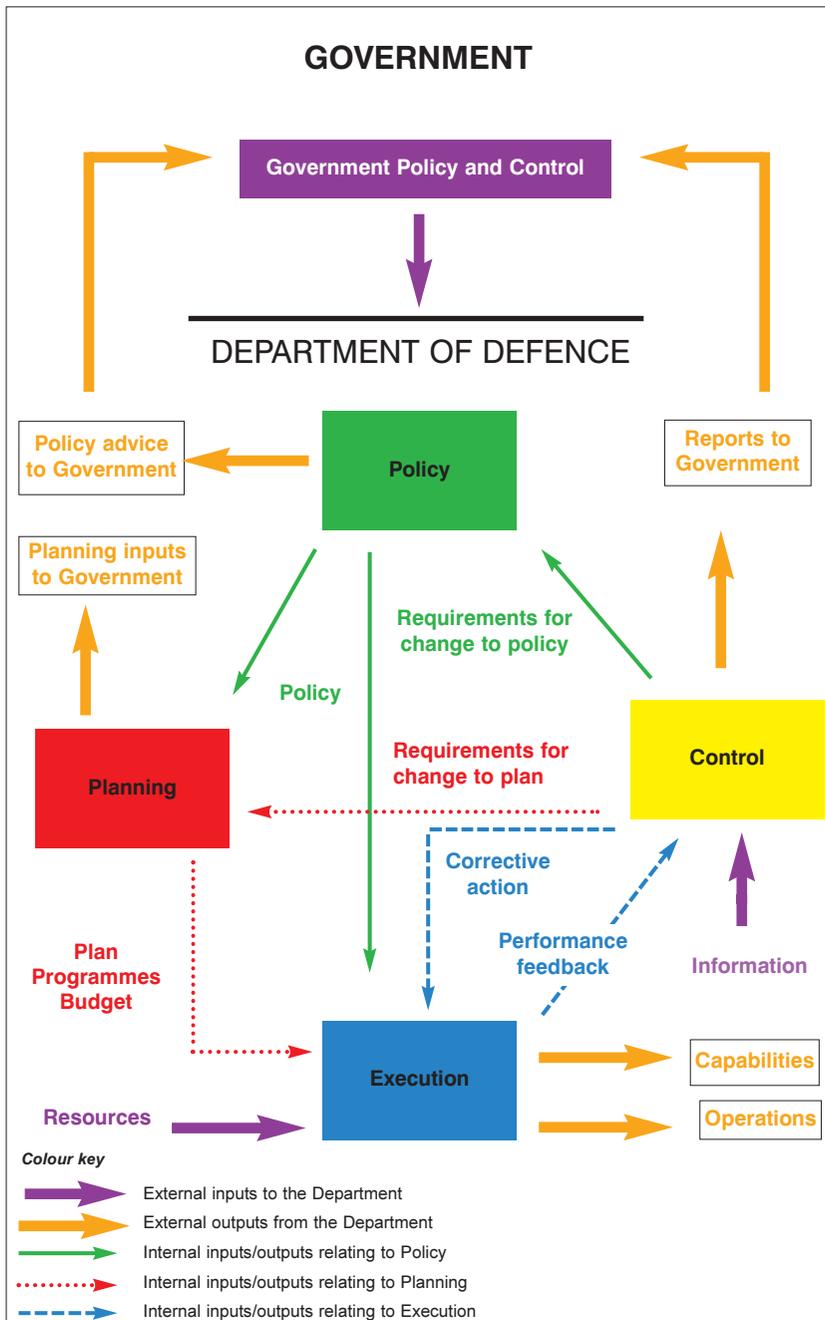
- defence capabilities or mission-ready military forces;
- successfully conducted operations; and
- administrative inputs to government in the form of policy advice, planning inputs and reports.

To produce these outputs, defence receives two main inputs. These are government policy and resources. Within the defence establishment, these inputs are converted to the outputs through a process of policy formulation, planning, programming and budgeting, execution of the plans and internal controls and corrective action. This process is shown schematically in the diagram opposite.

The diagram illustrates both the internal management processes of a defence organisation as well as the interaction of defence with government. Defence does not make national defence policy or the final strategic defence plan. It produces, through internal processes, policy options and advice to government as well as planning inputs into the national planning and budgeting processes of government. These inputs are considered at various government forums such as cabinet and parliament, and on approval become the official defence policy and plan. The defence department then converts these internally and executes the defence plan, in accordance with policy and the approved budget, to produce the desired outcomes.

Similarly there are internal control processes within defence departments, but there is also an external control and oversight process. Defence reports to government on its performance according to the plan by means of regular financial and other progress reports and government – by means of inspections and audits – maintains oversight of the defence function.

This process can only work and ensure appropriate, adequate, affordable and accountable defence for the nation if there is an open and mutually respectful relationship between government and the defence establishment. Government should respect the professional inputs from the defence establishment, ensure that it does not misuse defence for party political or personal reasons and ensure that defence is adequately resourced, equipped and financed to do its job. Defence leaders on the other hand must have respect for the constitution, the principles of democracy and the role of government in



directing the defence function on behalf of the voting public. The South African White Paper on Defence (1996) states that “the Department of Defence respects the right and duty of Parliament to exercise independent and critical judgement on defence policy and practise”<sup>1</sup> but goes on to say, “However, the government recognises that civil–military relations will only be stable if the requisite control is accompanied by the fulfilment of certain responsibilities towards the South African National Defence Force (SANDF) and its members”.<sup>2</sup>

These responsibilities, as described earlier in this paragraph, are elaborated upon in the White Paper.

### **Challenges and best practice**

Militaries in Africa are generally a power unto themselves, not transparent to civil society and inefficient. Defence budgets are closed to public scrutiny and very little control is exercised over defence expenditure. In general, defence management is not aligned with the principles of defence in a democracy. To change this situation and to align defence with modern best practice in democratic countries, African governments and defence establishments face some challenges, namely, to:

- establish good governance and ensure adherence to the constitution;
- establish democratic civil–military relations;
- establish defence policies aligned with the challenges facing the region, including a clear role definition for the military forces;
- improve efficiency in defence management;
- enhance the professionalism of the defence sector;
- further enhance collaborative security in the region; and
- institutionalise good planning, programming and budgeting practices in defence establishments.

### *Governance*

Good defence management and healthy civil–military relations are premised on the assumption of the existence of good governance of the state as a whole. All too often in Africa, the problem with defence is not that the militaries are ‘out of control’ but rather that governments are misemploying their militaries for regime security, party political goals or the entrenchment of personal power. This often leads to an over-politicised military with the consequence of the military, having been invited in, eventually landing up running government.

It is therefore important that the roles and functions of the militaries as well as the rules and procedures for their employment be clearly established in law and that parliaments have a clear authority in vetoing the employment of the military. The employment of the military by the ‘commander-in-chief’ or president should be constitutionally subjected to parliamentary approval.

### *Democratic civil–military relations*

Africa has a bad record of military interventions in government and militaries that are not accountable to civil authority. This has led to the general situation where there are poor civil–military relations. Civil society does not trust or like the military and sees them as a power unto themselves, as not serving the national interest and as wasting scarce resources on ‘toys for boys’. On the other hand, militaries in general think of civilians as ignorant of security matters and not trustworthy to share in ‘the affairs of defence of the state’. The challenge to defence management is to break down these perceptions and barriers and to build mutual understanding, respect and trust.

The essential elements of good civil–military relations are:

- *Effective and dynamic political oversight over defence establishments.* This is best accomplished through the establishment and empowerment of parliamentary defence committees through the constitution or other legislation. Furthermore, the members of such committees need to be capacitated for the execution of their tasks by the provision of sufficient resources, access to military institutions and programmes designed to enhance their understanding of defence and security matters. Similarly political oversight requires the establishment of civilian defence ministries responsible for the political guidance and control of the military. Such ministries need to be equally capacitated especially by the provision of civilian staff members who have high-level qualifications in strategic and military studies as well as in public and defence management.
- *Transparency and accountability in defence sector management.* Transparency and accountability are crucial issues in the allocation and management of defence resources for all levels of planning, programming and budgeting. If defence resource allocation and management are not transparent, defence will never be able to achieve public support or the cooperation and support of broader government. If not accountable to government and the people, defence becomes a cause unto its own and will not be aligned with national interests and priorities. It will easily be corrupted and decision making will be easily manipulated towards self-interests. Civil involvement and control of overall budget decisions, as well as careful auditing at all levels, can help ensure that resources are actually used to accomplish policy objectives. Nevertheless, the most effective solution to this problem is a commitment at all levels to national interests and objectives and the development of clear and transparent policy, planning, programming and budgetary processes and systems to implement them. These processes must of necessity be aligned with the national management framework. Transparency and accountability are enhanced through the system of performance agreements as this relies on the definition of clear output objectives and performance standards and the agreement as to the required resources. The system is also

based on negotiation, ensuring better insight, understanding and co-operation.

- *An informed civil society.* Everybody cannot and does not want to be an expert on defence matters or even, for that matter, be involved in the defence debate. On the other hand, if civil society is ignorant of and uninterested in defence matters, it would not be possible to create healthy civil–military relations and defence would in fact have a licence to ‘go its own way’. It is therefore imperative that academic institutions, non-governmental organisations (NGOs) and the media develop expertise in defence matters and defence management matters in order to inform broader society and also to influence governments in general and parliaments in particular. Such academic institutions and NGOs have the responsibility of doing research to bring to the table fresh and alternative options for improved defence policy and management.

### *Role definition for defence forces*

The question ‘What are the defence forces for?’ needs to be answered in Africa. The present answer is almost universally ‘to defend and protect the territorial integrity and sovereignty of the state’ or ‘to defend the country against external aggression’. Yet few African defence forces are designed or prepared for this task but are rather used for what would generally be described as ‘secondary roles’. This begs the question ‘What are defence forces *really* for?’ The challenge is to clarify the roles of defence forces in the present African reality and in support of the ideals and goals of the African Union (AU) and the New Partnership for Africa’s Development (NEPAD). This entails:

- examining and prioritising the risks and dangers facing the continent such as inter-state threats, intra-state threats, international terrorism, warlordism, transnational organised crime, piracy and others; and
- establishing national policies and strategies for combating these risks and dangers, defining the roles and tasks of defence forces in support of such policies and strategies and designing, equipping and preparing them accordingly.

### *Efficiency*

Africa, more than any other region in the world, needs to ensure maximum efficiency in defence management and practice. Requirements for defence and security are high, but equally important are the requirements for social upliftment and economic development. On the other hand, resources are very scarce. It is therefore crucial that every cent spent on defence be spent as efficiently as possible. Areas that need special attention to contribute to efficiency include:

- *Sustainability in defence planning.* If defence plans and programmes are not sustainable over time, this will lead to the non-maintainability and ineffectiveness of capabilities. Sustainability will only be achieved if governments commit themselves to the approved defence plans, if all planning is done on full lifecycle costing and if defence budgets are expended in the most efficient manner possible. Care must also be taken in planning to evaluate accurately the effect of currency fluctuations on the lifecycle cost of capital equipment.
- *The funding of operations.* It is not possible or desirable to budget for the execution of military operations other than routine operations that can be foreseen and accurately planned well ahead of time. Most military operations come at short notice and in the running financial year for which the budgets have been developed and approved many months ago. Examples are peace support missions, major disaster relief missions and even limited war. It is submitted that trying to budget for the unforeseeable will result in a misappropriation of funds. The only way to handle this problem is by the existence of central contingency funds managed by the national treasuries. For large-scale contingencies exceeding the capacity of such a contingency fund, governments will have to revise the total national budget, regarding both departmental allocations and income.
- *Tooth-to-tail ratios.* All possible efforts must be made to ensure the optimal tooth-to-tail ratio of defence forces and departments. All too often supporting structures are bloated at the cost of operational capabilities. Determination of the size and capacity of support structures can only be done once the force designs have been determined. Modern business process re-engineering techniques can assist in the solution to this problem but will only be effective if top-management is committed to this cause and is ruthless in its application.
- *Direct client–supplier relationships.* In many defence forces certain structures exist through historic reasons only. The client (e.g. a combat service) is forced through organisational culture or other interests to make use of the services of such an organisation and is not allowed to ‘shop for this service’ elsewhere. This is bad practice and entrenches inefficiency. Accordingly, clients for services should be allowed freedom of choice as well as the freedom to establish direct client–supplier relationships.
- *Reserve or part-time forces.* Efficiency in defence can probably be best improved with the use of reserve or part-time forces. There is little need for countries at peace to maintain large regular armies, air forces and navies. The same degree of security and risk reduction can be obtained through the formation of small but highly professional regular forces (the so-called core force concept) backed and supported by a substantial reserve capacity. This has the added benefit of enhancing defence access to other professions as well as improving civil–military relations.

- Other potential solutions for the improvement of efficiency include outsourcing and public-private partnerships, improved 'jointery' between services, improved management information through the use of better information technology, the better use of civilians in defence departments and improved management and leadership through education, training and development. Of these the improvement of management information through the use of better information technology might be the most crucial aspect to the improvement of efficiency in defence organisations.

### *Professionalism*

One of the main objects of management should be to entrench good principles and to practise such principles in the organisation to ensure durability and sustainability into the future. Management should strive to create a learning organisation that will correct itself and continually adapt to changing circumstances and new best practices. The challenge is to build professional defence establishments supportive of the norms, values and needs of the African people. This entails:

- incorporating robust civic education programmes into defence sector education, training and development programmes. This includes developing understanding and acceptance of international humanitarian law, constitutional provisions, defence and other related security legislation, the principles of civil-military relations and the rule of law;
- developing modern command, leadership and management practices in defence establishments to ensure effectiveness, efficiency, high morale and good discipline; and
- ensuring equitable gender and population group representation within defence establishments. This is crucial for creating defence forces that are truly representative of the people and non-partisan and non-discriminatory. If defence forces are not representative of the people they will lack credibility and general acceptance by the voting public.

### *Collaborative security*

The challenge that faces Africa is to move away from a competitive or national self-dependent approach to defence and security to a sub-regional and regional collaborative approach to security. This entails:

- developing defence policies based on the principles of non-provocative and confidence-building defence. The challenge is to create defence establishments that can effectively defend their countries without posing a threat to neighbours;
- establishing regional confidence- and security-building measures including sub-regional arms registers and support for arms control regimes;

- improving the capacity of regional and sub-regional organisations to manage the diverse security challenges and strengthening their mechanisms for conflict prevention, management and resolution;
- enhancing regional and sub-regional early warning systems;
- establishing standby arrangements for peace support and other combined operations;
- creating a viable peacekeeping capacity on the continent;
- establishing the maximum degree of interoperability between national security services;
- developing improved regional and sub-regional managerial and command-and-control capabilities and mechanisms;
- investing in combined skills development and training through regional and sub-regional interchanges and joint exercises;
- establishing rapid reaction capabilities on the continent; and
- establishing a collective and integrated disaster management capacity.

### *Planning, programming and budgeting*

No meaningful programming and/or budgeting can be done without the existence of a long-term or strategic defence plan, just as no meaningful plan can exist in the absence of guiding policy. Within the protective function of government, which includes intelligence, policing, justice and correctional services (or prisons) as well as defence, planning is contingent by nature. This means that requirements are driven by outside factors such as internal crime levels and external instability. In the case of defence, planning must be done for a very uncertain future environment. This is complicated by the long period required to build and prepare defence capabilities, which implies the maintenance of certain capacities purely for possible future eventualities (defence contingencies).

For budgeting and expenditure control processes to be efficient and economic, they must be based on well-argued and elaborated plans and programmes. In terms of oversight and control, the emphasis of parliamentary committees and other oversight bodies should be on scrutinising the strategic plans, more so than getting involved with the details of budgets at unit level. Budgets can look good and expenditure can be exactly according to budget, without contributing in any way to the achievement of national defence policies and priorities. It is therefore crucial that oversight bodies understand the planning, programming and budgeting logic, ensure that defence departments establish processes and procedures aligned with the principles of good public sector administration and insist on involvement from the outset of the process and not only in the approval of the budget.

The defence planning, programming and budgeting process is an iterative process involving negotiation between all levels of defence management.

Planning is largely top-down based on an analysis of requirements and environmental factors as well as on an estimate of available resources. As it moves down in the organisation – through performance agreements between superiors and their subordinates – more and more accurate costing is done until, at unit level, accurate zero base budgeting can be done. These unit level budgets, in turn, are added from bottom-up to constitute the total defence budget. This obviously entails much iteration to ‘make ends meet resources’.

The planning, programming and budgeting process is the central feature of defence management for providing resources to the defence force to ensure ‘the defence and protection of the state, its territorial integrity and its people’ in alignment with national security and defence policy. The process rests on the rationale that defence budgets should be the result of good long-, medium- and short-term plans that are based on open and clear defence and national security policy. All plans, programmes and budgets should be driven by clearly defined and agreed upon outputs.

The defence planning, programming and budgeting process should clearly be aligned to and integrated with the national public expenditure management process and therefore the principles applied to defence management should not differ markedly from those applicable to other activities of government.

The quality of these processes is crucial for ensuring national defence and security whilst not making the opportunity cost of defence too high in terms of other social and developmental priorities. Inefficiency and imprudent use of scarce resources will undermine security and the broader national interest.

In the final instance, defence planning, programming and budgeting must be based on modern management practices, principles and procedures and on accurate research, analysis and strategic assumptions. It must have a long-term focus and be the product of an inclusive process. It must be innovative and ensure permanent efficiency improvements in order to make defence affordable. While the nature of planning, programming and budgeting systems may vary internationally, the basic processes, techniques and principles put forward in this paper should assist in ensuring the effectiveness and efficiency of defence as well as greater transparency and accountability in defence resource allocation and management.

### **Critical success factors for meeting the challenges to defence management in Africa**

The challenges to defence management in Africa, particularly in emerging democracies, are varied, wide-ranging and complex. As has been indicated it encompasses a variety of interrelated aspects. To ensure transformation in present practices to meet these challenges will require dynamic leadership and commitment. It is submitted that there are seven critical success factors that have to be met to ensure success in future defence management in Africa. These are:

### *Institutionalisation of democratic governance and institutions*

The defence sector is just that, a sector of government. It does not exist in isolation and cannot be treated differently from other sectors of government. For the defence sector to adhere to the principles of transparency, accountability, efficiency and improved service delivery, government itself must live up to these principles. Defence must therefore be managed within the bigger picture of democratic reform and good governance. It occurs within the ambit of the consolidation of democracy, promotion of human rights, good governance and the creation of a culture of accountability and transparency. If these conditions do not exist, it is unlikely that any attempt at transformation of defence management will be either successful or sustainable.

### *Robust democratic oversight*

Parliamentary committees must be actively involved in all major aspects of defence management. They must not simply act as 'rubber-stamps' to key policy issues emerging from the defence sector. To be able to do this, such committees must empower themselves by getting expert advice from knowledgeable civil society organisations such as academic institutions and NGOs involved in the defence and security debate. They must also be willing to spend plenty of time in debate with defence sector officials and to visit structures at ground level in order to enhance their understanding of the realities of the sector. In the final instance, parliamentary committees and parliament must accept responsibility for the results of defence sector activities as they ultimately make the decisions.

### *Decisive and strategic leadership*

Within the defence sector, the responsible ministers and top-management must personally lead and give direction to the defence establishments. This is not the responsibility of the departmental strategists and planners. They act as the expert advisors to top-leadership and obviously do the groundwork for them. However, it is for top-management to provide the vision and drive for real transformation in defence management. It is also the responsibility of top-management to engage with the political decision-makers in open and vigorous debate about the future of the defence sector.

### *Cooperative relations between officials and politicians*

Everything possible must be done to establish trust and good relations between political decision-makers and officials in the defence establishments. This should be developed into a partnership accepting co-responsibility for defence

and security matters. In a good partnership every participant understands his/her role and recognises and respects the roles of others. Defence and security issues are too important to be based on an adversarial and antagonistic relationship. To enhance relations, time and effort must be spent on team-building activities.

### *Alignment between policy and budgets*

Parliament and cabinet must ensure that the defence policies they advocate and approve are within the scope of affordability of national budgets. Unaffordable 'day dreaming' policies lead to inefficiency and unsustainability in defence forces and to eventual institutional collapse.

### *A management focus on strategic control*

In most organisations management tends to focus on policy making and planning and to neglect strategic control. In transformational organisations, strategic control becomes the principle focus of management. Once goals have been set and implementation begins, management must continually monitor the external and internal environments for changes that can disrupt the achievement of the set goals. Such changes will trigger the requirement to change internal policies, strategies or plans or alternatively to instigate timely corrective action where members are sub-performing. Where strategic control is neglected, the organisation will soon find itself out of line with the set vision and strategy.

### *Learning culture*

If transformation of defence management is to be sustainable in the long term, it is necessary to invest in the people of the sector through education and training programmes. Examples are civic education programmes at all levels but especially at ground (entry) level, professional continuation training and encouraging and supporting employees to develop their academic and managerial qualifications. We live in a rapidly changing world and must therefore continually adapt to new circumstances. To remain abreast of developments it is imperative that a learning culture is inculcated into the defence establishments of Africa.

## **Conclusion**

Defence management in Africa comes from an era in which it was considered to be the exclusive reserve of the militaries and in which civil oversight and control did not exist. In many cases the military was either highly involved in

government or the 'de facto' government of the country. This has left a legacy of mutual distrust between African militaries and civil society and poor civil–military relations. Lack of civil oversight and control has also led to inefficiency in defence management.

The positive changes towards democracy and good governance on the continent now provide the scope for change, and this poses many challenges to the management of defence establishments in Africa. The first of these is the establishment of good governance of the military and robust civil–military relations. At the same time there is great need to align defence policies and capabilities with the real needs of Africa and African nations. Africa cannot afford militaries that are not specific to its real needs. To ensure peace and stability on the continent, all must be done to consolidate and advance the improvement of collaborative security through the strengthening of regional and sub-regional organisations. Finally, defence establishments need to ensure greater efficiencies, professionalism and the institution of good planning, programming, budgeting and financial control procedures and practices.

This requires the institutionalisation of democratic governance and institutions, robust democratic oversight over defence, decisive and strategic leadership and cooperative relations between officials and politicians. Within defence establishments, it is also important to alignment policy and budgets, to focus on strategic control and to create a learning culture.

If this is achieved, defence establishments will be able to play their rightful and important roles in Africa for the good of all her people.

## **Notes**

- 1 South African White Paper on Defence (1996), Chapter 2, p 8.
- 2 Ibid, p 10.

# **‘CAGING THE LIONS’**

Naison Ngoma

## **Introduction**

A provocative opening statement in a discussion of the military and security services anywhere in the world would be that it is an absolute necessity to restrain their budgetary habits because these services will always require more and newer equipment to assist them in meeting the defence and security needs of the countries they belong to. I dare to stipulate that this is the norm irrespective of geographical location.

This does not, however, mean that the defence sector<sup>1</sup> is inherently irresponsible but merely that, charged with the enormous undertaking of looking after the defence and security interests of their countries, nothing surely can be too expensive, and no sacrifice too large for the defence and security of the nation.

The defence sector in the Southern African Development Community (SADC) is therefore no exception.

The essence here is to study what the legislature is confronted with as it engages with the military and security services. It focuses on the attitude of the military and security hierarchy of placing its requirements above everything else; believing in the process that it is doing good. The services' success in this endeavour is a matter that will form the critical mass of the paper.

The paper also examines the manner in which the core businesses of the services are adversely affected by the intensity of pursuing the all-important function of defending state sovereignty.

By illuminating the workings and 'exposing' the general mentality of the military, it is expected that a contribution would have been made towards either curtailing the excesses of the military and security services or assisting in their reorientation in an effort to enhance their effectiveness at the lowest opportunity cost.

The paper focuses on the challenges of maintaining the core function of the military and security services, the demands of defence budgets and how best to ensure that the military and security services operate within the overall framework of the national budget.

## **A case of competing needs**

### *Towards human security*

The defence sector in SADC has played significant roles in the attainment of peace and security in the sub-region during both the decolonisation period and apartheid era in Southern Africa. With the attainment of a democratic dispensation in South Africa in 1994 and the relatively peaceful environment that has since followed, a re-examination is required of the prevailing security threat as well as the need to balance the defence and security requirements with the wider needs of the countries encompassed in the fabric of human security.

Important as it would be to maintain acceptable levels of security, so too must other competing needs such as tackling poverty, disease, the environment and unemployment be addressed. It is, of course, not disputed that these seemingly non-traditional security issues can raise the levels of security narrowly defined. With other competing needs, defence and security expenses should no longer be unquestioned, as was the case during the period of intense regional instability. It is the duty of the legislature to exercise this oversight role and to meet the overall needs of the countries.

The current September 11 era has focused attention on security and democratic issues that include adherence to the rule of law and to human rights. Most characteristic of the contemporary era has been a more vigorous debate about the management of the sub-sector, with a particular focus on defence budgets and the procurement of military hardware.<sup>2</sup> The major constraint has been a defence sector that operates without due regard to the changed circumstances.<sup>3</sup>

During the period of conflict in Southern Africa – generally from the 1970s to the 1990s – as would be expected, states spent a lot of resources on defence and security budgets. The priority then was meeting the military threat posed by the pre-1994 South African regime, Rhodesia and the settler governments of Angola and Mozambique to the rest of the sub-region. The aggressor regimes in turn felt threatened by the rest of the region and its external supporters (mostly Cuba and Eastern European states). With the sub-region becoming more peaceful, especially after 1994 when South Africa became a democratic state, and with the other states (Zimbabwe, Angola and Mozambique) having earlier changed governments to more democratic ones, it was expected that expenditure on defence and security issues would logically reduce considerably. Although to an extent this was in fact the case, spending on the defence sector has remained fairly high, largely due to conflicts in the Democratic Republic of Congo (DRC) and Angola. Table 1 shows SADC defence expenditure for the period 1985 to 2002.

The significance of the reductions over the period 1985 to 2002 is largely due to the massive reduction in South Africa's defence expenditure by almost half from US\$3,252 million to US\$1,697 million. In fact the aggregate of the rest of

**Table 1: SADC defence expenditure (as a % of GDP)**

Country	US\$ million			US\$ per capita			% of GDP		
	1985	2001	2002	1985	2001	2002	1985	2001	2002
Angola	1,328.0	1,458.0	946.0	152.0	108.0	68.0	15.0	16.7	9.8
Botswana	32.0	184.0	254.0	30.0	115.0	157.0	2.2	3.8	4.5
DRC	71.0	972.0	946.0	2.0	19.0	18.0	0.9	22.2	21.7
Lesotho	16.0	24.0	21.0	11.0	11.0	9.0	4.8	3.1	2.9
Malawi	32.0	12.0	12.0	5.0	1.0	1.0	2.0	0.7	0.7
Mozambique	330.0	86.0	76.0	24.0	5.0	4.0	9.9	2.4	2
Namibia	n.a.	83.0	79.0	n.a.	46	43.0	n.a.	2.9	2.8
South Africa	3,252.0	1,814.0	1,697.0	97.0	41.0	37.0	3.8	1.6	2
Zambia	34.0	27.0	25.0	5.0	3.0	2.0	0.9	0.8	0.7
Zimbabwe	475.0	287.0	637.0	57.0	25.0	56.0	5.7	3.1	3.4
Tanzania	359.0	139.0	127.0	16.0	4.0	3.0	3.8	1.5	1.5
Mauritius	1.0	9.0	7.0	2.0	8.0	6.0	0.1	0.2	0.1
Total	5,499.0	5,095.0	4,751.0						

Source: *The Military Balance, 2003-2004*, pp 339-340.

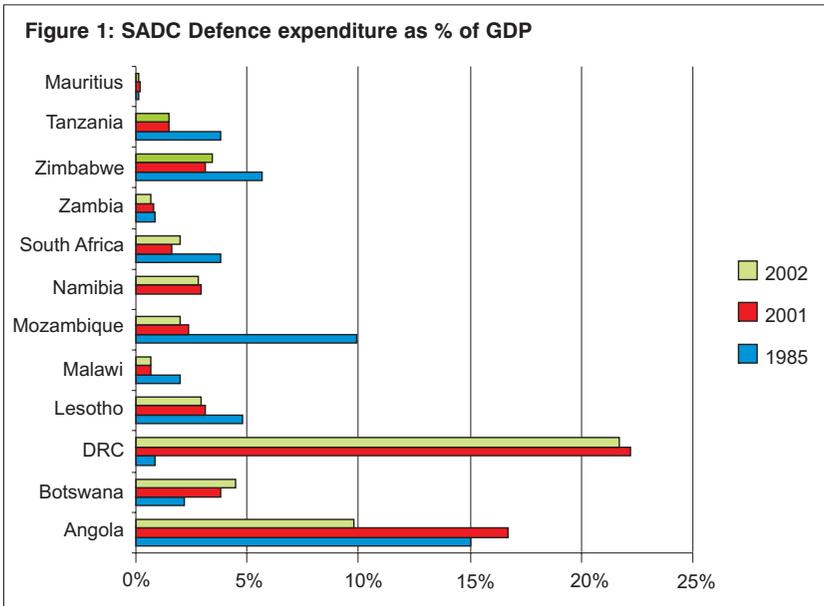
the region showed an increase of 36%. Although much of the generally high defence expenditure is due to Angola and the DRC (the former a country slowly coming out of conflict, and the latter still in the depths of war), the level of defence expenditure remains unacceptable for a region with soaring demands in other areas of human security.<sup>4</sup> The diagrammatic presentations (*over page*) provide a clearer picture of the SADC defence expenditure, which in the author's view should be much lower for a period without major defence and security concerns.

The role of the legislature is therefore not only in ensuring the appropriate utilisation of the resources that go to the defence sector but also that of balancing the needs of the sector with other sectors, which in times of relative peace are more important. One way of ensuring the optimum utilisation of the meagre resources available to this developing sub-region is to examine critically the role of the military and security services in order to ensure that they remain aligned to their primary roles.

## The 'clash' of roles

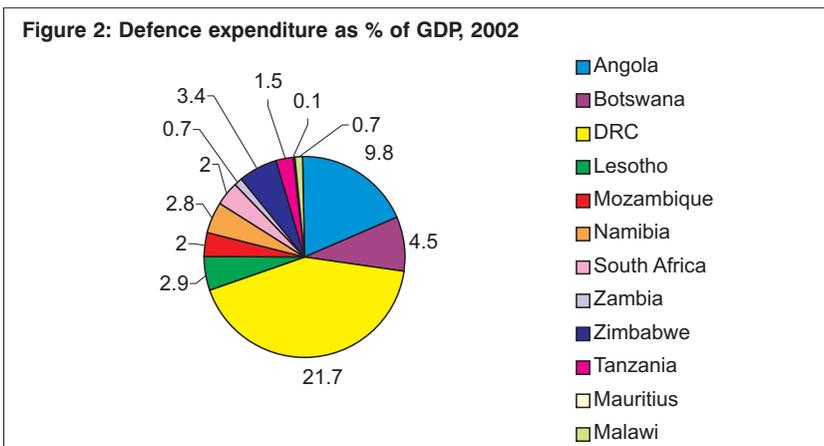
### *'Widening the mission'*

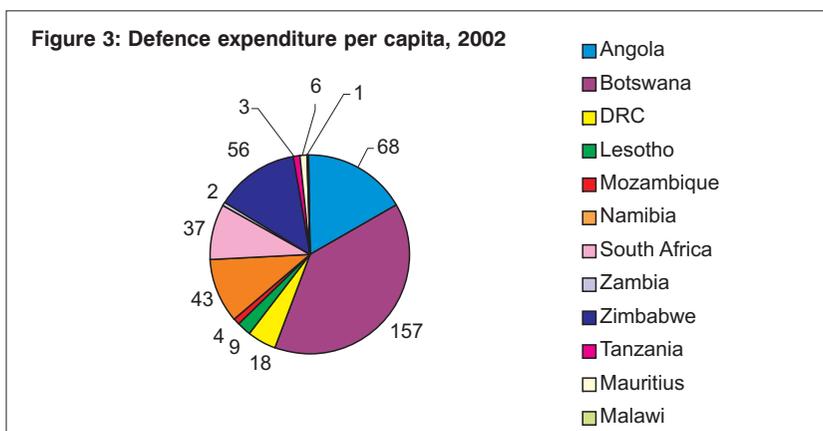
Determining the role of the military and security services is a political function which is nevertheless undertaken in close consultation with the military and security services themselves. The extent to which the role is kept in focus with changes in the national, sub-regional, regional and international environments depends largely on the ability of these services to interpret timeously and accurately what their role actually is and to determine whether they possess the capacity to fulfill that mission. Even more important would be whether the



'expanded' or 'widened' mission compromises their primary role to the extent that it seriously impedes the success critically needed in their traditional function. For instance, the military ought to be able to say that adding to its functions the production of winter maize<sup>5</sup> is extending its functions somewhat beyond the realm of its traditional role, even if participating in national reconstruction is among its functions.<sup>6</sup>

Providing such services as education, health facilities and improved communication through opening up remote areas which would have been





previously inaccessible, may be considered reasonable because the services could already have the capacity in adequate measure. It may, of course, be argued (not without good reason) that the military as a public institution would be expected to take on roles of an emergency nature. Considering, therefore, that most, if not all, developing countries have by nature of their situation such ongoing emergencies as severe shortages of adequate infrastructure, skills as well as other goods and services, the requirement for the participation in such activities is not unexpected.

What is critical to take into consideration is that the defence sector in undertaking the 'widened' role does not degrade its capacity to carry out the traditional ones of providing defence and security to the state and its people. It is therefore incumbent upon the legislature to evaluate critically the need for the defence sector to undertake additional roles. A long-term perspective is generally found to be the correct one to take. By its very nature, the military tends to be extremely effective at whatever it is ordered to do but may not necessarily be the most efficient agent.<sup>7</sup>

### *A question of the 'military psyche'*

Notwithstanding the challenges posed by an extended role for the defence sector, involvement in the socio-economic function – deserving as it usually would be – is not without unexpected and sometimes negative consequences. For instance, extending the military's activities to commercial businesses would "provide them with an income in addition to the state budget, which is neither overseen nor controlled democratically".<sup>8</sup>

The 'introduction' of the military and security services to such functions would consequently not only create commercial-minded service personnel (which in the bigger scheme of things may be providing a bigger pool of such resources for the state at large), but would also carry with it the baggage of the

'sly' side of business and possibly lead to corruption within the sub-sector.<sup>9</sup> For instance, the 'disappearance' of US\$20 million intended for the procurement of military equipment in Zambia could be looked at in this context.<sup>10</sup> The fact that the special investigations team on economic offences in Zambia has subpoenaed a number of members of the military to explain aspects of their participation in either some financial or resource transactions that have defrauded the Zambian government, is an indication of plausibility of the military being involved in such issues.

It is, however, important to note that the failure to project accurately the need for an expanded role of the defence and security services is not always due to incorrect appreciation by the services themselves, or for that matter a failure by the government to provide the necessary guidance or indeed that of the legislature to carry out its oversight responsibility *per se*. This may in fact be a function of the traditional military psyche demanding unquestioning obedience to anything projected downward. What inevitably happens is the re-translation of government intentions to the commanders' mission – how so ever it may be 'going against the grain'. More often than not the eagerness to comply with the wishes of the political 'masters' or assisting in the latter's programme is regarded as 'loyalty' to the government; quite often regarded as legitimate. This is, of course, until some political dynamism brings about a regime change that regards the previous one as acting on the fringes of legality, if not altogether illegitimately.

It is important to note that while the defence and security services may appear rather quiescent, at another level (usually privately and most probably in cahoots with some members of the opposition parties) they are projecting their disapproval, and inevitably either supporting the political opposition or indeed redirecting their views through a political process in which they themselves become the ultimate actors. Hence the need to maintain the military and security services as professional bodies with a focused function.<sup>11</sup> Harold Lasswell simply coagulates the characteristic function of the military profession by regarding it as the management of violence.<sup>12</sup>

While this rather narrow but accurate description of the defence and security services may be altogether too narrow in a 21st century era in which alternative skills of a body corporate ought to be used in the name of the efficient utilisation of resources, care ought to always be taken that where such roles are given, they are timely executed so that the services return to their primary function. The challenge is therefore in the maintenance of focus.

## **Making the 'core' function work**

### *Managing the budget*

To operationalise the primary function of the military and security services

inevitably demands having the required funding through an adequate budget. Krish Naidoo defines defence expenditure as one “reflect[ing] the extent to which a country will go to protect its sovereignty, territorial integrity and society”.<sup>13</sup> However, the demands of a budget itself are also the source of challenges to both the services and the legislature. Research reveals that one of the major sources of the fiscal difficulties being experienced by some states on the African continent arises out of their failure to manage their military and security services.<sup>14</sup>

Managing the defence budget is the principal form of effecting this control. Stressing this point, Ferdinand Eberstand at a hearing before the US Senate Committee on Armed Services on National Security Act Amendments in 1949, said: “The budget is one of the most effective, if not the strongest, implement of civilian control over the Military Establishment.”<sup>15</sup> This paper holds the view that the legislature has yet to use this tool effectively to enhance its oversight function.

A high-ranking government official once bemoaned that the state’s treasury could not meet the demands of the defence and security services faced with other competing developmental needs. As argued earlier, the SADC defence budgets remain unacceptably high. This is despite the fact that only Botswana has continued to reflect a continuously increasing budget, a noticeable reduction in the South African budget and a seeming ‘levelling out’ of the budgets of the rest of the SADC member states. What seems to be apparent is that the major factors that require to be turned around for a reduction in defence expenditure to become a reality are defence and security personnel – more accurately, the high ranking officials who make and direct decisions in the defence sector.

### *The generals and their ‘toys’*

The defence and security services’ major hold on the defence sector has been their seeming indispensability in the provision of security for the protection of sovereignty, territorial integrity and society. It is argued, therefore, that without providing the financial resources they ask for, security cannot be guaranteed. It is a fact that ‘generals’ (with hardly any exception) will embark on a choice of military hardware without recourse to its actual cost. In the rare instance that this is factored into the equation, its purpose would normally be for selecting the type of hardware.

Foremost in the minds of the services is therefore the effectiveness of the equipment or service *vis-à-vis* that which is held by the ‘enemy’. There is a tendency to ‘overlook’ the ‘less important’ aspects of paying for the equipment in preference for that which meets the demands and activities of the services. It is therefore prudent that a measured balance be attained between the operational and technical demands of the practitioners and that of the

legislative committees that exercise oversight on the defence and security services, whose interest would be on both the efficacy of the services and other competing needs.

Evidently, as much as it is necessary for parliamentarians to acquire the “expertise needed to scrutinise military budgets”,<sup>16</sup> and which expertise is considered lacking in a number of countries, it is also necessary to focus on the service personnel themselves rather than on some technical aspects. A meticulous examination of the defence sector – especially of the military budgets – as well as an intensive interrogation of the service personnel is what is required to understand, and where necessary curb, the desire by generals to have their ‘toys’.

### *A question of ‘conspiracy’*

However, generals, colonels and the like do not always undertake the task of achieving their objectives without some help. This tends to be provided by other branches of the executive – either knowingly or unknowingly. Wuyi Omitoogun writes about “a conspiracy between the legislative and executive branches (in the name of security) to hide defence expenditure either from the public or from donors”,<sup>17</sup> but more often, it is a conspiracy entirely within the executive branch. Some services have been known to reach “gentlemen’s verbal agreements between the Budget office and the departments”,<sup>18</sup> leading to the salaries bill being overstated “to facilitate some unclear allowances like [a] maize meal allowance and other allowances that are outdated”.<sup>19</sup>

Further contributing to the difficulties of oversight of the defence and security services has been the limited capacity by auditors to make “on-the-spot assessment[s] of military sites that [is] important in order to verify some of the purchases purportedly made by the military”.<sup>20</sup> This has been worsened by the general lack of expertise on defence and security issues among civil society – a situation aggravated by the general veil of secrecy around most aspects of the defence sector. Admittedly, there are issues that governments will want to control access to, but this should not limit the required oversight.

### **Who guards the guardians?**

The new challenge facing SADC, and which confronts the world at large, is seeking a way of establishing the oversight function beyond the legislature; or, put more correctly, what measures to put in place when the parliamentary oversight process is not compromised. How relevant it is to suggest a tier above that of the legislature, is an issue that is an open question. Should it be rather a question of structuring the legislative branch to meet this need? Yet another point to ponder is whether adequate oversight of the military and security sub-sector can ever be achieved in the confines of a state dimension, or whether

such a success is more likely in a collaborative sub-regional and regional framework. The ultimate question is: Who guards the guardian?

Some members of the legislature proudly, though in a somewhat quite manner, admit that oversight committees over the defence sector have been known to collude with the sector, much like that between some civil servants and members of the defence and security discussed earlier. Efforts to try to address the challenge of securing control of the military and security services have not been confined to the generally poor and weak but have even been the subject of intense debate in countries such as the US. The creation of the Defence Management Committee by John Johnson to reduce the defence budget,<sup>21</sup> notwithstanding existing legislative provisions, begged the question whether that ought to be the way to go in the sub-region. However, that there is an urgent need to tighten control of the military and security services is without any doubt.

## Conclusion

We have argued that matters of defence and security require close and concerted attention, not merely because of the important issues of security but also because expenditure on the defence sector means a reduction in expenditure for other sectors. With the reduction in insecurity in the SADC region, there ought to be an increase in resource allocation for other needy areas; human security rather than a concentration on military security is what a more peaceful environment requires.

The defence budget has been recognised as a major component that, if adequately controlled, would assist considerably in achieving both security and development for states in the region. In this regard, the legislature was identified as the critical tool to reign in defence and security, which would normally be more inclined in seeking to meet what it considers to be the requirements for keeping countries safe. There is therefore recognition that unless defence budgets are well controlled, defence and security personnel will seek to maximise their needs – even if this means entering into possibly inappropriate understandings with some members of the executive and legislature. The challenge of a sustained oversight capacity remains an unresolved issue.

## Notes

- 1 The defence sector is defined here as one which, *inter alia*, comprises military institutions, government ministries insofar as they provide support to the military, the head of state as commander-in-chief and non-governmental organisations that comment on the activities of the military.

- 2 The debates on the arms procurement programme in South Africa and other related debates in the sub-region are cases in point.
- 3 In a recent interview with an auditor-general of a country in the sub-region, some generals were accused of operating as if they were a law unto themselves.
- 4 General economic growth fell from 3.4% in 2001 to 2.9% in 2002. For details see *The Military Balance, 2003-2004*, p 231.
- 5 Defence forces operating below capacity - Mabenga, *Times of Zambia*, 24 June 2003, pp 1-2.
- 6 Handbook for Parliamentarians, *Parliamentary oversight of the security sector: Principles, mechanisms and practices*, Centre for the Democratic Control of Armed Forces, Geneva, 2003, p 53.
- 7 Major General Len Le Roux of the Institute for Security Studies has often made this point based on his experience and observations during his long tour of duty.
- 8 Handbook for Parliamentarians, op cit, p 56.
- 9 For a detailed discussion of the issue of unbudgeted expenditures and their relationship with corruption, see W Omitoogun, The processes of budgeting for the military sector in Africa: Armaments, disarmament and international security, *SIPRI Yearbook 2003*, SIPRI, Oxford, 2003, p 13. See also G Chellah, ACC probing air commander, *The Monitor*, 20 June 2003, <<http://www.monitor.co.zm/media/news/viewnews.cgi?>>. See also, Funnjika charged with receiving £15, 000 bribe, *The Post*, 3 December 2004, <<http://www.zamnet.zm>>.
- 10 Africa: In search of leaders, *Zambia Daily Mail*, 24 June 2003. See also ACC probes Kavindele, three 'New Deal' ministers, ZAMNET, 23 June 2003, <<http://www.zamnet.zm/newsys/news/viewnews.cgi?>>.
- 11 See S Huntington, *The Soldier and the state: The theory and politics of civil-military relations*, Belknap Press and Harvard University Press, Cambridge, Massachusetts and London, 1985, pp 7-18.
- 12 Ibid, p 11.
- 13 K Naidoo, Are we spending too much on defence?, *African Security Review* 4(5), 1995, <[www.iss.co.za/Pubs/ASR/4No5/Naidoo.html](http://www.iss.co.za/Pubs/ASR/4No5/Naidoo.html)>.
- 14 Some work has been undertaken on defence expenditure in all the SADC countries, as well as in Uganda and Ghana.
- 15 Huntington, op cit, p 437.
- 16 Omitoogun, op cit, p 13.
- 17 Ibid, p 14.
- 18 Research interviews, 2003.
- 19 Ibid.
- 20 Omitoogun, op cit, p 15.
- 21 Huntington, op cit, p 443.