

COMPLEX EMERGENCIES IN

THE 21ST CENTURY

**CHALLENGES OF NEW AFRICA'S STRATEGIC
PEACE AND SECURITY POLICY ISSUES**

EDITED BY FESTUS B ABOAGYE

CONTENTS

LIST OF FIGURES AND TABLES	iii
GLOSSARY OF ABBREVIATIONS	iv
ABOUT THE AUTHORS	ix
PREFACE	xi
EXECUTIVE SUMMARY	xiii
CHAPTER 1 Introduction: Motivations and Dynamic Issues of Post-Cold War Security Issues in Africa <i>Featus B. Aboagye</i>	1
CHAPTER 2 Giving back the future: a discourse on the dilemma of child soldiers <i>Angela McIntyre</i>	13
CHAPTER 3 African Experiences in Post-Cold War Transitional Justice: Lessons for Liberia <i>Lydia Kemunto Bosire</i>	29
CHAPTER 4 Towards Sustainable Peace And Security in Africa: The Challenges of Security Sector Reform in Post-Conflict Sierra Leone <i>Adedeji Ebo</i>	49
CHAPTER 5 Developmental Peace Missions: Synergising Peacekeeping and Peace building in Transition Periods <i>Richard Gueli and Sybert Liebenberg</i>	73

CHAPTER 6	93
Synergies and Pitfalls: The Roles and Contribution of the Private Sector in Peace Operations within Africa	
<i>Doug Brooks and Derek Wright</i>	
CHAPTER 7	109
African Regional and External Support and Outsourcing: The Need for a Clear Regulatory Framework	
<i>Raenette Taljaard</i>	

LIST OF FIGURES AND TABLES

-
- Figure 1:** Total population of concern to UNHCR by region of asylum and category (1 January 2005)
- Figure 2:** The peacekeeping and peace building gap
- Figure 3:** Targeting the gap: Developmental Peace Missions
- Figure 4:** Functional categories of the Peace and Stability Industry
- Figure 5:** Contracts in the battle space (Avant)

GLOSSARY OF ABBREVIATIONS

ANAD	Non-Aggression, Assistance and Mutual Defence
APRM	African Peer Review Mechanism
AMIS	African Mission in Sudan
AMU	Arab Maghreb Union
ASF	African Standby Force
AU	African Union
BAPSC	British Association of Private Security Companies
CADSP	Common African Defence and Security Policy
CDF	Civil Defence Force
CEMA	Convention for the Elimination of Mercenarism in Africa
CHE	Complex humanitarian emergencies
CIMIC	Civil-Military Co-ordination
CRC	Convention on the Rights of the Child
DDR	Disarmament, demobilisation and reintegration
DPKO	Department of Peacekeeping Operations (UN)
DRC	Democratic Republic of Congo
ECCAS	Economic Community of Central African States

ECOMIL	ECOWAS Mission in Liberia
ECOMOG	ECOWAS Ceasefire Monitoring and Observer Group
ECOWAS	Economic Community of West African States
EO	Executive Outcomes
FRELIMO	Mozambican Liberation Front
HRL	Human Rights Law
ICD	Inter-Congolese Dialogue
IDP	Internally Displaced Person
IGAD	Intergovernmental Authority on Development
IHL	International Humanitarian Law
IOC	Indian Ocean Commission (Commission de l'Océan Indien, COI)
IPOA	International Peace Operations Association
JMC	Joint Monitoring Commission
MISAB	African Mission in Bangui
MLD	Military Logistics Depot
UEMOA	Union Economique et Monétaire Ouest Africaine
MONUC	UN Mission in the Democratic Republic of Congo
NCACC	National Conventional Arms Control Committee
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental Organisation

NMOG	Neutral Military Observer Group	SGBV	Sexual gender-based violence
NPA	National Prosecution Authority	SHIRBRIG	Standby High-Readiness Brigade
OAU	Organisation of African Unity	SLM/A	Sudan Peoples' Liberation Movement/Army
OLMEE	OAU Liaison Mission in Ethiopia-Eritrea	SLPP	Sierra Leone People's Party
OMIB	OAU Mission in Burundi	SSR	Security Sector Reform
OMIC	OAU Mission in the Comoros	TCC	Troop-contributing Countries
PAE	Pacific Architects and Engineers	TRC	Truth and Reconciliation Commission
PCRD	Post-conflict Reconstruction and Development	UN	United Nations
PCRU	Post-conflict Reconstruction Unit	UNAMIR	UN Armistice Mission in Rwanda
PMC	Private Military Company	UNAMSIL	UN Assistance Mission in Sierra Leone
PSC	Peace and Security Council/Private Security Company	UNDP	United Nations Development Programme
PSCAI	Private Security Company Association of Iraq	UNICEF	UN Children's Fund
QIPs	Quick Impact Projects	UNITA	National Union for the Total Independence of Angola
RDLs	Rapid Deployment Levels	UNMEE	UN Mission in Ethiopia and Eritrea
RENAMO	Mozambique National Resistance	UNMIL	UN Mission in Liberia
RFMA	Regulation of Foreign Military Assistance	UNOCI	UN Operation in Côte d'Ivoire
RUF	Revolutionary United Front	UNOMUR	UN Observer Mission in Uganda and Rwanda
SADC	Southern African Development Community	UNOSOM	UN Operation in Somalia
SANDF	South African National Defence Force	UNPOL	UN Police
SCSL	Special Court for Sierra Leone	UNSAS	UN Standby Arrangements System
SEA	Sexual exploitation and abuse	UNSC	United Nations Security Council

UNSG	Secretary General of the United Nations
UNTSO	UN Truce Supervision Organisation
WPAY	World Program of Action for Youth
ZANU-PF	Zimbabwe African National Union - Patriotic Front

ABOUT THE AUTHORS

Festus B. Aboagye is the Head of the *Training for Peace Programme* at the Institute for Security Studies, Pretoria, South Africa.

Lydia Kemunto Bosire works with the United Nations Population Fund. Most recently, she was a Project Manager for the Networks and Capacity Building programmes at the International Centre for Transitional Justice. Ms. Bosire holds both a B.A (*cum laude*) and an M.P.A. from Cornell University, New York.

Doug Brooks is the founder and President of the International Peace Operations Association (IPOA). Mr. Brooks is a specialist in African security issues and has written extensively on the regulation and constructive utilisation of the private sector for international stabilisation, peacekeeping, and humanitarian missions. Mr. Brooks has testified before the United States Congress, appeared on a range of national and international news programmes, and has lectured at numerous universities and colleges. Previously, he has been an Adjunct Faculty member at American University, Washington, D.C., and an Academic Fellow and Research Associate with the South African Institute of International Affairs (SAIIA), Johannesburg.

Dr. Adedeji Ebo is a Senior Fellow and Co-ordinator of the Africa Working Group at the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Switzerland. He was previously Associate Professor and Head of Department of Political Science and Defence Studies, Nigerian Defence Academy, Kaduna, Nigeria.

Richard Gueli is a Researcher for the Council for Scientific and Industrial Research (CSIR), Built Environment. Prior to joining the CSIR, Richard was a Junior Researcher for the Centre for Military Studies (CEMIS) at the South African Military Academy, with a primary focus on peacekeeping and civil-military relations research. Richard has produced a number of publications in international peacekeeping, terrorism, and civil-military relations. He holds a B.Mil (Hons).

Sybert Liebenberg was, until December 2006, a Senior Researcher for the Council for Scientific and Industrial Research (CSIR) and a key proponent of the emerging concept of Developmental Peace Missions. Before joining the CSIR, Mr Liebenberg was a lecturer in development studies at the University of South Africa. His current research focuses on developing African technological solutions for implementing stabilisation and reconstruction operations. He holds a Master's degree in Public and Development Management from the University of Stellenbosch. He is currently working for PriceWaterHouseCoopers, East London, South Africa.

Angela McIntyre is currently a researcher at the University of the Witwatersrand Cullen Library in Johannesburg, working on the history of the Angolan civil war. She has been involved in humanitarian assistance, rural development and policy research in Africa since 1993. Her research interests and published works cover a variety of sectors, including children and youth in war, environment and conflict, and the privatisation of security in Africa.

Raenette Taljaard is a Director at the Helen Suzman Foundation and a Senior Lecturer at the Graduate School of Public and Development Management. She lectures, in South Africa and abroad, on the emerging role of the private military and security sector and its implications for policy and the development of international law. Ms Taljaard served as a member of the South African Parliament from 1999-2005, as a Member of the Portfolio Committees on Finance, Foreign Affairs, Public Accounts and Defence during that period.

Derek Wright is the Director of Membership and Finance at IPOA. Mr Wright is a graduate of Georgetown University's Security Studies Programme, where he specialised in conflict resolution and post-conflict reconstruction with an area focus in the Middle East and North Africa. While an undergraduate at the University of Chicago, Mr. Wright participated as an Academic Fellow in the Programme on International Security Policy (PISP).

PREFACE

The Institute for Security Studies (ISS) is a leading African human security research institution which works towards a stable and peaceful Africa characterised by sustainable development, human rights, the rule of law, democracy and collaborative efforts. With offices in South Africa (Pretoria and Cape Town), Ethiopia (Addis Ababa) and Kenya (Nairobi), the mission of the ISS is to conceptualise, inform the debate on human security in Africa, in order to support policy formulation and decision-making at every level towards the enhancement of human security for all in Africa.

Since the demise of the Cold War, first the Organisation of African Unity (OAU) and, foremost the African Union, has been preoccupied with policy approaches and institutionalisation to promote peoples' security in Africa. In light of the new paradigm of complex humanitarian emergencies, arising from devastating violent armed conflicts, especially within, but also between states, the African Union has since its transformation in 2002 from the OAU, been more proactive in establishing the new architecture and infrastructure for prompt and effective responses to violent armed conflicts, and their resolution and management. In addition to peace building, the Union's efforts in this regard have included the establishment of the Peace and Security Council (PSC) and the African Standby Force (ASF), as well as engagements within the international community, especially in the area of mobilisation of financial resources to support regional peace implementation.

Given the enormity of New Africa's security realities and challenges, and the vital importance of its undertakings, particularly in the area of peace support intervention, there is a logical and rational demand for collaboration with the widest range of stakeholders, certainly including African policy research institutions, to complement these regional and international efforts. From a research perspective, such engagement provides an opportunity to examine the key issues that inform New Africa's peace and security challenges in the 21st century and whether the emerging division of responsibilities between the continent and its partners within the international community is a rational and sustainable one.

This publication by the *Training for Peace* (TfP) Programme at the ISS is an attempt to contribute to the discourse that is inevitable in enriching the academic, expert and practitioner content of the processes entailed in New Africa's drive towards a more stable and secure continent for development. The publication brings together analytical papers, based largely on a combination of desk research and a thorough personal knowledge and understanding of the relevant issues, including previous field research, policy exposure and practitioner backgrounds of the authors.

While aiming to inform the readers, the authors deliberately avoid being prescriptive, focusing rather on identifying and interrogating some of the critical issues that are not only salient to the discourse, but which have an impact on efforts towards the security of people in Africa. In essence, the publication is a contribution to the discourse around the challenges of the protection of vulnerable populations at the normative level.

The ISS/TFP acknowledges the invaluable contribution of the authors towards enhancing stability and security within the continent. It also wishes to express sincere gratitude and appreciation to the Royal Norwegian Government for the generous funding towards the publication of the volume.

EXECUTIVE SUMMARY

The AU System does not shy away from its inglorious past that characterised the OAU from its inception in 1963 until the start of its transformation during the early 1990s. Coming of age at the height of the Cold War, the OAU was politically torn between competing East-West political ideologies that instilled fear among and between the newly independent African states. African leaders of that era, who were also founding fathers of the continental Organisation, were driven by an inordinate desire for power for safeguarding national independence and sovereignty. By extension, this resulted in many of them remaining in office for far longer than was necessary. Convinced of their mandate to safeguard Africa's sovereignty, they sought to claim that they were the only ones bequeathed with love of country, sufficient wisdom and commitment to safeguard national independence.

The positions of the founding fathers as eternal leaders was further secured through the conflicting principles, purposes and objectives of the OAU, whose charter emphasised: 1) sovereign equality, 2) non-interference in the affairs of member states and 3) the pacific settlement of disputes. As a result of the combination of these realities, the political leadership of the OAU could not agree on the institutionalisation of a continent-wide security policy mechanism. Consequently, ideas on the establishment of a Joint African High Command (1965), an African Defence Organisation (1975) and the African Defence Force (1979) were jettisoned to the ashes of history, followed in 1979 with the abolishing of the Commission for Arbitration and Mediation.

The security policy vacuum that held sway for nearly 30 years resulted in *ad hoc* sporadic pacific peace and security intervention approaches that focused on less complex ceasefire monitoring missions of limited scope, duration and objectives. In the process, the OAU lost precious time for security policy institutionalisation that, since the transformation of the OAU from 2000-2002, has been the avowed desire and commitment of the AU to remedy. Rather fortuitously, the new direction and purpose of the AU were underpinned by the realities of complex emergencies within the continent that led to unprecedented human insecurity as a result of fundamental

changes in the nature, numbers and impact of violent armed conflicts following the end of the Cold War.

AU policy formulation and development

Confronted with the dismal failure and the legacy of security challenges of serious proportions, the successor AU has been demonstrating a new sense of purpose and direction aimed at the promotion of peace and security, human rights, the rule of law, consolidation of democracy and sustainable socio-economic development. In its recent policy statements, the AU has departed from the passive policy of non-interference to the more proactive policy of non-indifference to issues of human [in]security. The tone of this policy stance of New Africa was set by the provisions of the Constitutive Act of the African Union (July 2000). It is clear that this document marks a major departure from the inhibiting objectives, principles and purposes of the OAU Charter. To the contrary, the AU Constitution has provided space for such provisions as: the right of the Union to intervene in a member state ... in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.

Thus, in order to correct the deficiencies of the former status quo, the AU set itself the task of establishing more effective institutions and legal instruments to serve as a framework for the actualisation of the spirit and intent of the Constitutive Act. Undoubtedly, the most crucial of these institutions is the Peace and Security Council, (PSC), which was launched on 25 May 2004, following the entry into force of the Protocol establishing the PSC on 26 December 2003. The materialisation of the PSC, pursuant to Article 5(2) of the Constitutive Act of the AU, has also resulted in the establishment of the African Standby Force (ASF) as the operational arm of the PSC, under Article 13 of its Protocol. This is in itself an important achievement bearing in mind that one of the reasons for the failure of the PSC's predecessor structure, the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution (1993), was the absence of such a structure and capacity.

But, in addition to such institutionalisation, the AU has also been seeking to establish the legal frameworks for the protection of the ideals enshrined in its Constitution, as well as in its seminal security policy document, the Common African Defence and Security Policy (CADSP) of 2004. The pages of the CADSP are not only replete with provisions for collective responses to both

internal and external threats to Africa, but, they also contain a catalogue of normative conventions, such as:

- The Convention for the Elimination of Mercenarism in Africa (1977)
- The African Nuclear-Weapon-Free Zone Treaty (the Treaty of Pelindaba, 1998)
- The Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (2000)
- The African Charter on Human and Peoples' Rights ((1981)
- The African Charter on the Rights and Welfare of the Child (1999)

New Africa's security issues

Beyond the foregoing institutionalisation, one may wonder quite rightly as to what has been the impact of this paradigm change on specific policy and situational issues. This is the purpose of this study. However, while the study does not seek to answer such a question, it still argues that there is need to disaggregate the specific issues that underpin human insecurity, particularly those arising out of violent armed conflicts by interrogating the dynamics of such issues in order to contextually identify relevant gaps and seek to establish appropriate plans of action to plug them. The publication therefore suggests that such an approach will enhance the realisation of the spirit and intent of both the Constitutive Act of the African Union and the Common African Defence and Security Policy.

Among the plethora of security issues and questions, the publication emphasises disaggregating critical issues, including:

- The dynamics of the history and political ramifications of child soldiering, particularly the ways in which children and youth are swayed into being active participants and not merely passive beneficiaries, in peace building
- The conflicting ends of pre-war and transitional justice, and the usefulness and inevitability of truth-telling and reconciliation

- The security sector reform (SSR) process in post-conflict countries, such as Sierra Leone, that are not rooted in democratic governance, but suffer from donor dependency
- The time disconnect between peacekeeping and peace building that exacerbate the socio-economic underpinnings of conflict, by emphasising international peace mission interventions, while leaving post-conflict peace building and reconstruction to long term bilateral engagement needs addressing
- The usefulness of the privatisation of peacekeeping through increasing outsourcing to the private sector in African peace and stability operations
- The dangers inherent in the utilisation of the private sector and, in consequence, the need for regulation of the sector, but the not-so-glaring negative impact of national over-regulation of the private industry by such countries as South Africa

These, of course, are only a select short list of the issues that could form a broad canvas of matters that deserve discussion, but in this monograph limitations of space denied us the opportunity to do so.

In accordance with its own aim of not being prescriptive, but seeking to identify and interrogate issues, the publication simply concludes that, while there is need for a continental and regional security architecture in Africa, the abiding challenge for New Africa is that it is being compelled to punch above its weight in establishing institutions and instruments that provide architectural frameworks whose impact on the African security landscape is far from assured. The publication therefore calls for a scaling down of expectations and a focus on action plans that will help to achieve the broad objectives of continental and regional security.

CHAPTER 1 INTRODUCTION: MOTIVATIONS AND DYNAMIC ISSUES OF POST-COLD WAR SECURITY ISSUES IN AFRICA

Featus B. Aboagye

I. The first generation: a blind ideological glimpse of the obvious engendered by political [in]expediency

The renaissance peace and security policy of 'New Africa' stands in sharp contrast with that of 'Old Africa'. It is a far cry from the ideological apprehensions and political impotence of Old Africa that New Africa has not only reinvented itself, but is also pursuing policies aimed at political institutionalisation to establish greater security for sustainable socio-economic development within the continent.

The formation of the Organisation of African Unity (OAU) in May 1963 resulted from an ideological compromise among the three blocs of which the 30 founding states were members. As a result of this, and coupled with the debilitating influence of the Cold War which was at its height during the 1960s, the OAU was unable to reach consensus on a viable peace and security policy, including an architecture for peace support interventions in the many inter-state conflicts resulting from disputes over the borders inherited at independence. The Organisation was therefore rendered impotent by ideological suspicions and apprehensions that found expression in three of its Charter principles, namely non-interference, sovereign equality of member states and peaceful settlement of disputes. As a result, the OAU dismissed Kwame Nkrumah's idea of a Joint African High Command in 1965. Subsequently, it also jettisoned other proposals for an African Defence Organisation (1975) and the African Defence Force (1979) to the dustbin of history. In 1979, the Organisation totally abolished the Commission for Arbitration and Mediation. Rather, it chose to adopt *ad hoc* pacific and [*laissez faire*] military intervention approaches, with sporadic less complex ceasefire monitoring missions that were limited in scope, duration and objectives.¹

The inaction on the part of the OAU represented a lost opportunity for the institutionalisation of Africa's first-generation peace support infrastructure. However, this state of comparative 'benign' African conflicts was to change and did change from the end of the Cold War when African conflicts, on the

one hand, took on the qualitative form of complex humanitarian emergencies (CHE) with such severe human security implications that necessitated an international response.²

African conflicts during this era have seen dramatic changes in the nature, means and methods of violent armed conflicts. Conflicts have predominantly been intra-state, involving state (regular and militia) and non-state actors (rebels, warlords, mercenaries), as well as an unrestrained use of force. In addition to being prolonged and spawning more warring factions, they have also engendered genocide in Rwanda, the DRC and now Sudan-Darfur. Coupled with the proliferation of small arms and light weapons, such conflicts have seen the unscrupulous use of child soldiers, the massive displacement of populations within states and across national borders, the targeting of civilians and aid workers, denial of humanitarian access, and serious abuses of human rights and international humanitarian laws (HRL and IHL), by all sides. The deplorable impact of complex emergencies within Africa is underscored in the UNHCR's state of the world's displaced and other populations. As shown in Figure 1, Africa accounts for over 25 percent of the total population of global concern.

Figure 1: Total population of concern to UNHCR by region of asylum and category
(1 January 2005)

Region	Refugees	Asylum seekers	Returned Refugees	Others of concern				Total Population of concern
				IDPs of concern to UNHCR	Returned IDPs	Stateless	Others	
Africa	3 023 000	207 000	330 000	1 200 000	33 000	120	67 000	4 860 120
Asia	3 471 000	56 000	1 146 000	1 328 000	62 000	724 000	113 000	6 900 000
Europe	2 068 000	270 000	19 000	900 000	51 000	731 000	391 000	4 430 000
Latin America and Caribbean	36 000	8 000	90	2 000 000	-	-	26 000	2 070 090
Northern America	562 000	291 000	-	-	-	140	-	853 000
Oceania	76 000	6 000	-	-	-	-	-	82 140
Total	9 236 000	838 000	1 495 090	5 428 000	146 000	1 455 260	597 000	19 195 350

Source: UNHCR³

More than the inter-state conflicts during the Cold War, the new post-Cold War violent internecine armed conflicts in Africa - and elsewhere - have not been contained within national borders, but have had ramifications for regional security, and resulted in the destruction of the integrity and capacity of states - for example Liberia, Sierra Leone, DRC, Côte d'Ivoire and Somalia - in zones of conflict, to ensure the protection of civilian populations.⁴ The character and impact of complex humanitarian emergencies, as rightly described then by Boutros Boutros-Ghali (1995) below, is now an understatement:

Many of today's conflicts are within states rather than between states. The end of the Cold War removed constraints that had inhibited conflict in the former Soviet Union and elsewhere ... There has been a rash of wars within newly independent states, often of a religious or ethnic character and often involving unusual violence and cruelty.

Given the strategic marginalisation of the continent in the new mono-polar world, the post-Cold War African leadership was compelled to take timely action to forestall further economic decline and impoverishment, as well as the vicious cycle of disease and conflict.⁵ It is clear that the impact of inaction during the Cold War may not have been felt because the ramifications of conflicts during that period were of containable and manageable proportions as such conflicts did not destroy African states. More pertinently though, African security policy up to the end of the Cold War, was characteristically reactive; it was not proactively far-sighted to deal with the continent's 'future' security issues. As a result, the opportunity for the institutionalisation that would have served to lay the foundations of a viable peace and security architecture, including the institutional expertise and capacity for intervention in the more complex conflicts that were to unfold during the succeeding generation in post-independent Africa was lost.

II. The second generation: redeeming lost time and getting real

In a bid to redeem lost time in a continent where conflict has become an inescapable part of life in some sub-regions, New Africa has been up to speed with the establishment of the Peace and Security Council. But it all started on a more cautious note with the establishment of the OAU Cairo Declaration (1993),⁶ as the beginning of the second generation of Africa's peace support operations strategic policy. The Declaration's Mechanism for Conflict Prevention, Management and Resolution made provision for

the institutionalisation of the Central Organ. However, it is a fact that the OAU's over-adherence to this principle was a political pretext to avoid any institutionalisation that was threateningly intrusive into the realm of political elitism. Operationally, therefore, the Central Organ was unable to deploy peace support missions on a concerted basis and seemingly did so only in regions - Great Lakes and Indian Ocean Islands - where the relevant regional organisations - ECCAS and IOC - were not as strong as in other parts of Africa, or lacked sufficient political consensus and commitment to do so.

In general, the OAU and its Central Organ failed in building long-term peace and security as a result of political sclerosis and operational anaemia. In the operational realm the Organisation's peace support interventions failed to impact the peace and security situation because of the *ad hocism* of its approaches, including lack of funding, as well as the limited scope of the mandates and ineffectual size of the missions that were deployed. In the final analysis, the OAU was a dismal failure in terms of peace support interventions policy, as part of its wider security policy. This failure was made more conspicuous by the alarming changes in the quantitative and qualitative nature of post-Cold War African conflicts and the new paradigm of CHE that required new regional approaches to multidimensional peace support missions.

Significant as this factor was in compelling the search for a more effective infrastructure, the need for such a post-Cold War infrastructure was further heightened by the practical policy developments and actions that were external to the continent. These external policy factors included obvious policy changes or shifts in UN peacekeeping, under-pinned by an abdication policy that was exacerbated by a perceptible Western disengagement from direct participation in UN peace operations within the continent. Coupled with Africa's post-Cold War marginalisation, African conflicts ceased to be viewed through the lenses of East-West ideologies; African conflicts, from Rwanda (1990); Liberia, Sierra Leone and Somalia (1991), to Burundi (1993) and the DRC (1998), were viewed either as internal and domestic, or as African regional conflicts demanding 'African solutions to African problems.'

As a product of fundamental security policy shifts within the UN and the international community, other factors internal to Africa compelled the transformation of the OAU into the AU in 2002. Since then, the imperatives of the provisions of the Constitutive Act of the AU, particularly those relating to: a) the right of the Union to intervene in a member state in respect of grave

circumstances, namely: war crimes, genocide and crimes against humanity (Article 4(h); and b) the right of member states to request intervention ... to restore peace and security (Article 4(j)),⁷ have implied greater demonstration of regional political will for the promotion of peace and security in Africa. In the AU's own political speak these provisions marked a significant shift from a policy of non-interference to one of non-indifference, and did not imply a name change only. To the contrary, they materially implied the institutionalisation of the PSC, to serve as a 'collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa,' as well as the establishment of the ASF.⁸

There is no doubt that promotion of peace and security in Africa and anywhere else impacts upon human rights and the reverse is true. It is also obvious that widespread violent armed conflicts, such as Africa has witnessed since the end of the Cold War, not only exacerbate human insecurity, but also create conditions that encourage war crimes and other serious violations of human rights, and crimes against humanity. The nexus between human rights and peace and security has been expressed by Gumedze: 'ensuring peace and security is a means of protecting human rights ... Put differently, any endeavour by the AU in ensuring peace and security will no doubt have an impact in the protection of human rights in Africa ...'⁹ He also further cites the observation by Aka that:

Human rights violations and outbreak of conflicts are two dilemmas in Africa that feed each other. Human rights atrocities can lead to conflict; in turn, some past and current conflicts in the continent portend wide-ranging ramifications for human rights.¹⁰

Quite apart from the establishment of institutions, the AU has also been proactive in establishing policies and instruments that address issues that underpin regional peace and security. The short list of these policies and instruments, for instance, would include the establishment of the African Charter on the Rights and Welfare of the Child (1999).¹¹ Among other provisions, Article 1 of the Charter imposes an obligation on the States Parties (member states of the OAU) to 'recognise the rights, freedoms and duties enshrined in this Charter and ... undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.'

With regard to the issue of the proliferation of small arms and light weapons the AU has also established the African Common Position to the Review Conference on Progress made in the Implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and light Weapons in all Its Aspects (UNPoA, 2001). Materially, it should be noted that at the level of the continent, important developments have taken place since the UNPoA (2001). In this regard, for instance, one may point to the entry into force of two legally binding Protocols, namely the Southern Africa Development Community (SADC) Protocol on Firearms, Ammunition and Other Related Materials (November 2004), and the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (5 May 2006). These are in addition to the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, that was adopted by ECOWAS Heads of State in June 2006, after its initial consideration at the ministerial and expert level in Bamako in May 2006.

Similar policy formulation and development has also taken place in Africa in respect of the scourge of mercenarism, notably in the establishment of the Convention for the Elimination of Mercenarism in Africa (1977), which provides that 'any person, natural or juridical who commits the crime of mercenarism ... commits an offence considered as a crime against peace and security in Africa and shall be punished as such.'¹²

The impact of violent armed conflicts in Africa underscores the wisdom and urgent need for carefully considered and well planned SSR programmes and processes. In view of the dislocation of national governance institutions as a result of such conflicts, the reform of the security sector, including civil oversight institutions, assumes an even greater importance and relevance and are crucial in the aftermath of conflicts.¹³ Post-conflict reform of the security sector will obviously help to maintain and restore collapsed state structures to normalcy for the consolidation of democracy and socio-economic development and the rule of law, rather than the monopoly of state and non-state violence emanating from the barrel of the gun. Considering the scale of state destruction and collapse, coupled with the incidence of fragile democracies within the continent, SSR is an issue that should be seriously considered as a tool for preventing costly conflicts and post-conflict reconstruction.

The extent to which the AU System has pursued sustained efforts towards the implementation of its policies and instruments is a question that will not

be examined in this publication as the focus of the publication remains the examination of the issues that inform Africa's security realities.

III. The critical issues and the focus of the publication

Based on policy and practical realities of Africa's own past and recent instructive experiences of the incidence of conflicts on the one hand, and on the other conflict resolution and management approaches, there are essentially two critical dimensions of the discourse. The first dimension involves broad issues, including but not limited to: 1) the incidence of CHE as a result of violent armed conflicts, the security dynamics of such conflicts and the mission scenarios that they entail; and 2) African and external policies, institutions and capacities that are required for the promotion of peace and security within the continent. Thus, the set of issues presented by the first dimension revolves around the incidence and devastating impact of conflicts. In this sense, the sheer numbers of post-Cold War violent armed conflicts and peace implementation interventions has a quality of its own.

In addition, however, these conflicts have engendered CHE involving such critical issues as: gross violations of human rights, crimes against humanity and war crimes; child soldiering; sexual gender-based violence (SGBV) and sexual exploitation and abuse (SEA); the widespread proliferation of small arms and light weapons and the question of disarmament, demobilisation and reintegration (DDR) within the ambit of wider security sector reform and governance; as well the tensions between transitional justice and truth and reconciliation mechanisms for dealing with prevalent impunity. The second set of issues therefore clearly constitutes some of the major dynamics of conflicts and post-conflict peace building.

Across both sets of issues, however, there are a plethora of questions around the issue of (humanitarian) intervention. In this regard, there are cross-cutting issues revolving around the wisdom of the regionalisation of peace and security that has engendered the establishment of the ASF, the prevailing disconnect between peacekeeping and peace building, as well as the role of the private sector and questions around regulatory frameworks.

Furthermore, both sets of issues pose considerable tests to the institutions of the AU System, as they essentially militate challenge fundamental principles, purposes and objectives of the Constitutive Act of the AU and the Common African Defence and Security policy (CADSP), as well as those of the NEPAD,

including its African Peer Review Mechanism (APRM). The stakes in African peace, security and stability policy have therefore risen as a result of the negativity of these issues in the context of the objective principles of the existing and evolving institutions within the continent.

The initial chapters of the publication focus on CHE-related issues. In this regard, Angela McIntyre in Chapter 2 focuses on an examination of the historical and political significance of child soldiering and discusses ways in which children and youth can become participants, rather than simply passive beneficiaries, in peace building. After sketching the historical context of child soldiering, McIntyre highlights wide support for global commitments in bringing an end to the practice of child soldiering, but questions whether the international instruments in place really address the brutal logic of militarising children and youth. Given the vast shortfalls in the protection and guarantees of the rights of children younger than 14, who make up over half the population of the continent, the direct involvement of children in conflict is inevitable. Nevertheless, the chapter argues that until children and youth are recognised as political stakeholders in peace and in conflict, rather than simply as victims, intervention on their behalves may fall short.

In providing the alternative view of justice during war, as well as the traditional discourse around the question of transitional justice, and the usefulness and inevitability of truth-telling and reconciliation, in Chapter 3, Lydia Kemunto Bosire describes the efforts that have been made to contribute towards accountability for past human rights abuses in Africa. The author describes the theoretical contribution of truth-telling to transitional justice, and observes that many commissions have been established in an attempt to reconcile the need for 'effective remedy' for victims of human rights abuses with the prohibitive politics and economics of seeking accountability through prosecutions. The chapter analyses the challenges that have faced truth-telling efforts in Africa, and their implications on Liberia's new truth commission. It concludes that the gap between expectations and reality of the possible contribution of truth-seeking to accountability, justice and reconciliation should be narrowed by cultivating very modest expectations about what they can deliver, especially in the Liberian context of a long legacy of weak institutions, and social-economic disenfranchisement. Promising more than the commission can realistically deliver would be a mistake that has been observed throughout Africa, from Sierra Leone to South Africa.

In Chapter 4, Adedeji Ebo reviews the security sector reform (SSR) process in Sierra Leone. He considers the context, rationale and main features of the

effort to transform the security sector after conflict, against the benchmarks of operational efficiency and democratic governance. He applauds the restoration of public safety, the participatory approach of the SSR process, the inclusion of SSR as the first pillar of the country's poverty reduction strategy, and the focus on decentralisation. He, however, notes that the SSR process suffers from donor dependency and lack of adequate attention to 'the youth question'. He further notes that the security sector has not been adequately embedded in a democratic governance framework. Considering the political economy of reform in Sierra Leone, he cautions that much of the gains of post-conflict reconstruction remain fragile. Claims of a 'success story' need, therefore, be made in guarded and subtle tones.

Starting from Chapter 5, against the background of the analysis of the first set of issues, Richard Gueli and Sybert Liebenberg underscore the urgent need for a more holistic model of peacekeeping - termed 'Developmental Peace Missions' - that synergises, to the extent possible, the planning and activities of the military and civilians in both conflict and post-conflict environments. In reviewing the overall effectiveness of peace efforts in Africa, the authors highlight two important issues: firstly, that military operations can prove counter-productive if continued for too long, and not complemented with real economic growth and social upliftment, that is, human security; secondly, the window of opportunity to kick-start reconstruction and development is often very narrow. In consideration of these challenges, Gueli and Liebenberg conclude that the initial peacekeeping force-mix should contain a fair amount of civilian capability to fast-track the delivery of basic social services. This sort of civilian capacity, the authors contend, is necessary to shorten the duration of fragile transition periods, create the momentum needed for longer-term developmental efforts, and to catalyse sufficient demand for peace and reform at the grass-roots level.

In Chapter 6, Doug Brooks and Derek Wright discuss the current and future role of the private sector in African peace and stability operations. The authors explain the diverse nature of the Peace and Stability Industry, highlight the special circumstances that surround the use of private security companies in Africa, and suggest that the work being done by the private sector in Africa and elsewhere has become indispensable to the UN, AU, NATO and others who lead peace and stability operations around the globe. It is the authors' belief that with responsible oversight, accountability, legislation and regulation, the private sector can help bring peace and stability to conflict and post-conflict environments faster, better, and more cost-effectively than governments, international institutions, and NGOs can alone.

At the other end of the spectrum, however, Raenette Taljaard cautions against the inherent dangers of an unregulated private industry. On the one hand, Taljaard, in Chapter 7, points out the incomprehensive nature of the existing AU-level regulatory frameworks in regulating the increased involvement of the private sector in peacekeeping and peace enforcement operations in resource-constrained environments. On the other hand, she expresses some amount of concern over the implications of over-regulation at the national level by countries such as South Africa.

IV. Conclusion

Drawing from the contributions of the above, this study concludes on the note that the need for a continental and regional security architecture in Africa is predicated on the prevalence of violent armed conflicts, and changes in the nature and scale of the impact of such conflicts. But even though that need was informed by the dynamics of external security policy transformations within the UN and the international community, it was also influenced by the post-Cold War political and socio-economic realities of the continent, coupled with the continent's own political transformation and institutionalisation.

The challenge for New Africa is that it is being compelled to punch above its weight to establish a standby capacity that is far less capable than such regional security structures as the NATO. The sustainability of the emerging African peace and security architecture and its impact on the African security landscape are far from assured. New Africa and its partners therefore need to agree to scale down expectations and not literally waste scarce resources on building security systems that will not add weight but rather shift the onus from the centre to the periphery. Among others, there is need for a rethink of the end game and exit strategies of Africa's security infrastructure.

One of the real challenges is that peace support and peace building interventions appear to be diverting attention from the critical issues that impact human security within the continent. There is need therefore for an appraisal of the New Africa's insecurity realities and the way forward will be to disaggregate the key issues of human security and focus attention on action plans that will help to achieve the broad objectives of continental and regional security.

Notes

- 1 The few exceptions to this policy inertia were the African participation in the UN Operation in the Congo (ONUC, 1960-65), the Shaba Province of Congo (1978-79), the Chadian operation (1979-82) involving Nigeria and an OAU Neutral Force from Congo (1979-80); and from 1981-82, the coalition of Nigeria (2 000), Senegal (600) and Zaire (700). See Berman Eric G., 2004. African Regional Organizations' Peacekeeping Experiences and Capabilities [online], 28-30. Available at: http://www.accord.org.za/ct/2004-2/CT2_2004%20PG%2027-33.pdf. Berman also cites the operations of Treaty on Non-Aggression, Assistance and Mutual Defence (referred to by its French acronym as ANAD) in 1975, 1985 and 1979, before joining ECOWAS in 2001.
- 2 According to the 47th Session of the UN General Assembly, CHE is a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict, which requires an international response that goes beyond the mandate and capacity of any single agency and/or ongoing UN country programme.
- 3 UNHCR Publications. 2006. The State of the World's Refugees, Human Displacement in the New Millennium [online]. Available at: <http://www.unhcr.org/PUBL/4444afc50.pdf> [accessed 1 March 2007].
- 4 See for instance, OCHA. Humanitarian Issues [online]. Available at: http://www.ochaonline.un.org/webpage.asp?Nav=_humanissues_en&Site=_humanissues.
- 5 The 26th Session of the Assembly of Heads of State of the OAU (Addis Ababa, July 1990), adopted the Declaration of the Assembly of Heads of State and Government of the Organisation of African Unity on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World. It underscored the need to act quickly and determinedly to forestall devastating African conflicts.
- 6 The Cairo Declaration aimed to: a) anticipate and prevent conflicts; and where conflicts had occurred, to b) undertake peacemaking and peace building functions, in order to facilitate their resolution. With the long-term objective of 'the achievement of self-sustaining peace based on good governance and the rule of law,' the Mechanism's primary scope was to focus on long-term peace building, anticipatory actions and preventive diplomacy and peacemaking. Failing these, it was to be concerned with civilian and/or military observer and monitoring missions of limited scope and duration. Complex and resource-demanding peacekeeping was left to the UN, which has fundamental responsibility for global peace and stability.
- 7 See the Constitutive Act of the African Union, Article 4 (Principles), pp. 6-7.
- 8 See Protocol Relating to the Establishment of the Peace and Security Council (2002) and the Policy Framework for the African Standby Force (2003).

- 9 See Protocol Relating to the Establishment of the Peace and Security Council (2002) and the Policy Framework for the African Standby Force (2003).
- 10 Aka, Philip C 2003. Human Rights as Conflict Resolution in Africa the New Century II. Tulsa Journal of Comparative and International Law, 181. In Gumedze, Sabelo 2006. Ensuring peace and security as a means of protecting human rights in Africa. Åbo Akademi 23 January 2006. Seminar Paper for Human Rights, [copy in possession of author].
- 11 See OAU Doc. CAB/LEG/24.9/49 (1990). The Charter entered into force on 29 November 1999.
- 12 See OAU Convention for the Elimination of Mercenarism in Africa, July 1977,
- 13 See Rupiya M 2004. African Perspectives of the Reform of the Security Sector since the 1990s, pp 7-14. In Le Roux, L, Rupiya, M and Ngoma, N (eds) 2004. Guarding the Guardians, Parliamentary Oversight and Civil-Military Relations: the Challenges for SADC. Pretoria: Institute for Security Studies, Pretoria.

CHAPTER 2

GIVING BACK THE FUTURE: A DISCOURSE ON THE DILEMMA OF CHILD SOLDIERS

Angela McIntyre

I. Introduction

Even as the European powers scrambled for possession of territory in Africa in the nineteenth century, some colonial agents did not overlook the utility of young people as instruments and agents of conquest and control. Later, as African nationalism swept the continent, the youth were hailed as the vanguards of the liberation movements, fighting the ideological and physical battles that would bring independence and majority rule from the middle of the twentieth century. As the last vestiges of the Cold War played out in Africa, children continued to find themselves at the frontline of the continent's new paradigm of violent intrastate and internecine conflicts. Child soldiering remains a feature of the intractable intrastate conflicts that today test peacekeeping capabilities to their limits.

It is in this latter context that the child soldier phenomenon began to draw the attention and condemnation of the global community. That the futures of generations of children were being devastated by conflict went without saying. No one denied that there would be long term impacts for social and economic development. Yet before the Convention on the Rights of the Child (CRC) and later, the Optional Protocol on the use of Children in Armed Conflict, the impact of war on children was considered 'collateral damage'. It is only relatively recently, and largely in the context of intrastate warfare, that it is recognised that civilians and children in particular have become the primary casualties of warfare. The 1996 Report on the Impact of War on Children and Graca Machel's subsequent study, *The Impact of Armed Conflict on Children*, published in 2001, were landmarks in that they documented detailed systematic violations of children's rights during war. Child recruitment, forced displacement, sexual violence, trauma and a loss of socio-economic rights, Machel argues, add up to the phenomenon of 'wars on children'. In addition to some 300 000 children who serve as combatants (a number which has not changed since the publication of Machel's book), casualty patterns have shifted to where 90 percent of those killed or maimed

in war are civilians,¹ and this of course includes a considerable number of children.

Over the years, the discourse on children and war has developed beyond the purely humanitarian arguments and now encompasses the notion that young people are not only victims, but actors in war. Furthermore, children and youth have been accorded a place in debates on human security. Rather than being simply acknowledged as victims of war, there is a growing awareness that children and youth are also actors, whose collective agency is of consequence not only in conflict, but in conflict prevention and in peace building.

This chapter will attempt to understand the participation of young people, both children and youth², with these crucial ideas in mind. Child and youth agency, that is, the ways in which young people negotiate their survival before, during and after violent upheavals, is key to understanding the dynamics of the problem. Children do not simply appear suddenly on the frontlines. The presence of young people, both children and youth, in fighting forces, is symptomatic of the breakdown of all of the norms and values that would normally protect them in peaceful societies. It is symptomatic of the inherently exploitative nature of post-Cold War violent armed conflicts, especially in Africa, such conflicts easily destroy already fragile coping mechanisms within communal frameworks and where state structures are weak, non-existent or simply incapable of providing alternative coping mechanisms.

There will be historical examples of how young people have been used as agents and instruments of violence and control during the periods of colonialism, the liberation wars, modern insurgent warfare and civil wars. This is followed by a discussion of recent research that has gone beyond recording the consequences of war and explored the ways in which children and youth negotiate environments wrought with insecurity, thereby becoming actors, and not just victims, of violent conflict.

The chapter concludes by suggesting that shortfalls in socio-economic rights continue to contribute to unrest and political mobilisation among young people in Africa, and that the key to upholding the rights of Africa's young people lies in governance.

II. Continuity and Change

The children's colonies were ruled by the Chicotte and the chain. If they survived their kidnapping, transport and schooling, most of the male graduates of the state colonies became soldiers, just as Leopold had ordered. These state colonies were the only state-funded schools for Africans in Leopold's Congo.

-King Leopold's Ghost

Records of the Belgian King Leopold's campaigns in the Congo illustrate that a century before norms and standards for the protection of children began to emerge, mechanisms for using children as instruments of control and subjugation of people were already in use. But the practice or phenomenon of using children in warfare was not an idea that was exported to Africa by the colonial masters. It is a fact of history that such indigenous kingdoms and tribes like the Ashantis in today's Ghana, or the Fon of Dahomey in present-day Benin, or the Zulus in today's South Africa, to name but a few, evolved a military doctrine that recruited able-bodied boys and girls into their fighting formations and logistical trains.³

Be that as it may, as the Congo succumbed to Belgian control in the late 19th century, the ruthlessly exploitive slave, ivory and rubber trades took an unimaginable toll on the population. An estimated 60 percent of the population⁴ perished during the height of the plunder, not only from severe working conditions, but also from displacement, disease and starvation. Children were not excluded from the exploitation. State officials were offered incentive bonuses for conscripts. In the case of children, the following criteria appeared in an order to Congo state officials:

...15 Francs per male child. The male children must be at least 1 metre 20 centimetres in height, and must be sufficiently strong to be able to support the fatigues of the road...⁵

Religious missions colluded in their conscription into Leopold's *Force Publique*; by rounding up 'orphans' whose parents were enslaved or killed by the *Force Publique* or Belgian officials. By moving them to special children's colonies, the regime was supplemented with a source of manpower. As in modern cases of child conscription, children were forced to participate in the violence against their own people.

What has changed since a century ago is that the participation of children in violent conflict has been recognised as endemic and has been internationally condemned. In 2003, the modern Democratic Republic of Congo (DRC) was named by advocacy groups as 'one of the countries of the world with the largest number of child soldiers.'⁶ What has remained the same, in a depressing echo of the past, is that the motivations are still economic. Although the struggle for control of territory is no longer driven by colonial domination, it is driven by rival militia factions notorious for their use of children on the frontlines. The trade in question concerns today's more profitable 'blood' resources - gold, timber, diamonds and coltan. The markets for these commodities have flourished while the source countries are in turmoil, with revenues disappearing into the ranks of governments, warlords, multinationals and illegal trade networks alike, or ploughed back into the arms trade, all to the impoverishment of the conflict countries.

Amnesty International (AI) describes the current situation in the DRC as follows:

...war in the DRC has led to the almost total destruction of the political, social and economic infrastructure in most of the country. Therefore children enlist, as do many adults, in the hope of escaping the poverty and the abject social conditions in which they live, viewing the army as their only viable means of survival in an economy which has been progressively brought to its knees by decades of corrupt administration and then by the war.⁷

Between the horrors of colonialism and the seeming nihilism of modern civil wars, young people have also occupied an arguably more ideologically defined place in African history; one that is not often condemned as exploitive, but in which they have been important actors nonetheless. As African nationalism swept the continent in the latter half of the 20th century to bring an end to colonial exploitation, the role of youth began to change: for the first time, it was being defined politically in the context of the state as countries moved toward independence. Now they were hailed as the vanguards of the liberation movements, fighting the ideological and physical battles that would bring independence and majority rule.

With political revolutions came social revolutions. The consolidation of revolutionary states called for interventions on the social front; one of the best examples of this kind of social engineering appeared in Mozambique under the Mozambican Liberation Front (FRELIMO). As the movement

gained control of territory in the 1970s, it recognised the need to create an alternative to the colonial state, described as the counter-state.⁸ The process of changing social and economic relations from the authoritarian colonial regime could not be left to spontaneity. Populations, especially rural ones, needed not only to be freed, but also re-politicised. Education was considered a key to establishing the revolutionary state, and under the leadership of Samora Machel,

...[s]tudents would spread FRELIMO's ideology in schools and urban centres and young activists were sent ahead of guerrillas to sensitise the villagers and prepare the ground and gather support for FRELIMO incursions.⁹

Enthusiasm for FRELIMO's socialist programme of nationalisation and collectivisation began to wane, however, as rural populations began to feel alienated by policies that sought to sever ties with their traditional pasts entirely. Initially supported by Rhodesia and later South Africa's Apartheid regime, the Mozambique National Resistance (RENAMO) soon began to tap into discontent among rural populations, and the civil war that broke out shortly after Independence shattered FRELIMO's dream of a counter-state brought about by social revolution.

Mozambique's long civil war would become one of the first to be renowned for the involvement of children in war. Both parties used children as combatants, but while RENAMO was vilified for its mass abductions of children during attacks on rural settlements, FRELIMO's instrumentalisation of young people was more insidious and remains poorly documented compared to that of RENAMO.

Students were sent abroad to study in military academies in Cuba and the eastern Bloc - Mozambique's Cold War allies - but would not receive their certificates until they had completed a period of military service. Rural youth, mobilised by the Mozambican Youth Organisation (OJM) would come to serve in civilian defence structures, while FRELIMO increasingly resorted to the press-ganging of young people to fill the ranks of its army. The creation of these militias and the presence of younger and younger soldiers at the front served to blur the lines between civilian and military populations; in the process, making civilians - and children and youth - primary targets of war.

By the time a peace agreement was struck in 1992, the number of child soldiers in both warring factions reached their thousands and their plight

spurred some of the first targeted humanitarian interventions to address the devastating impact that the war had inflicted on children. UNICEF launched programmes to gain access to child soldiers through negotiations with military commanders, to identify, demobilise and reunite them with their families and to provide psycho-social support.

While Mozambique struggled in the early nineties to come to terms with over a decade of militarisation and the momentous challenges of disarmament, demobilisation and reintegration, attempts to consolidate peace in Angola were on fragile ground. The failure of two successive peace accords spelled ongoing hardship for Angola's young population; estimates of the numbers of children who participated in the war are problematic as many were recruited as children and only demobilised as youth or adults. Some 8 000 children were registered for demobilisation in 2002, when the death of the National Union for the Total Independence of Angola (UNITA) leader, Jonas Savimbi, finally brought an end to the conflict, but the cumulative total of young people who fought over nearly three decades is undoubtedly much higher. As in other cases, the recruitment, indoctrination and deployment of young people on both the political and military fronts were key drivers of the conflict. The press-ganging of children into service in either Government or UNITA forces occurred in both rural and urban areas. For privileged urban youth who managed, through family connections, to avoid conscription, there were organisations in place to politicise and mobilise them. For the rest, indoctrination in party history and propaganda, if they occurred at all, were a brief stop on the way to the frontlines.

Sadly, in most cases, the historically positive role for youth as agents of liberation and self-determination became a purely militarised one. Along the way, the visions and ideology of liberation were forgotten and the social norms and structures that should have protected young people were worn away. Today, the militarisation of young people has been recognised as a feature of war, in which they are cast mainly in the roles of victims, but also of perpetrators. As political momentum began to build behind the movement to stop the use of children as soldiers, harrowing stories of child fighters both suffering and committing atrocities galvanised international commitments to ban what appeared as an exceptional and abhorrent abuse of that most protected and sacred state: childhood.

III. Victims, Perpetrators or Stakeholders?

As international advocacy made the practice of child soldiering highly visible, others began to focus on what happened behind the scenes and it became apparent that it could not be cleanly separated from the wider trends of youth mobilisation that have characterised political unrest and upheaval in Africa. From election campaigns, to liberation struggles to insurgencies, the deployment of young people has been systematic. Moreover, it has involved choices. While the viewpoint seemed controversial at first, it was critical in recognising young people as stakeholders, and not only victims, in conflict. From the fight-or-die ultimatum faced by the abductees, to more civil incentives, such as inclusion offered by politicians, children exercise their agency in ways that collectively makes them a powerful force. From the individual child combatant to the organised youth league, politics and war have long accommodated children and youth, who in turn, have fought for their survival.

The notion that children had agency gained currency with Alcinda Honwana's studies of psycho-social impacts and intervention with former child soldiers in Mozambique. Recruitment and training methods subjected children to severe psychological pressure, and identities were altered by serving in militaries:

Some of them were forced to kill their own relatives, raid and loot their own villages, or kill their neighbours. The suppression of close relatives seems to have been part of the strategy to create an insurgent force of youth. If the relatives of the kidnapped children were also in camp they would be killed in the child's presence, precisely to cut the links and eliminate the desire to escape and join the family.¹⁰

Despite the brutal and coercive nature of this conditioning, Honwana does not deny that children in these circumstances still exercised choice, and that their tactical agency, that is, the ways in which they negotiated the perils of war and used their identities as soldiers, was significant. Hence the need to re-negotiate identities as a way of re-defining agency in a way that enables re-connection with the community and the resumption of roles and identities consistent with the social structure and expectations of the community and family in peacetime.

More recently, studies of civil war in Liberia and Sierra Leone, where abduction and forced recruitment became common strategies of warring factions, have offered accounts of young people actively making alliances with armed groups as coping strategies. A 2005 study appeared in *Anthropological Quarterly* that described the survival tactics of a young Liberian woman:

Bintu's journey makes sense as a continuation of pre-war patterns of social navigation. She knows the dangerous topography of the Liberian social zone, and she makes good use of it in her manipulations of her social surroundings, whether in the form of using ties with boyfriends, "mates", commanders, civilians or peacekeepers, in "girlfriending", or even in the taking up of arms herself.¹¹

This young woman and countless others surrounded by violent conflict and trapped in survival mode, have abilities that enable them to define themselves even within the constraints of war. Was Bintu a victim of conflict or a perpetrator of violence? Perhaps she is more adequately described as a stakeholder, a player in a dangerous game of staying alive another day from which few people, children, youth, soldiers, civilians, refugees or otherwise, are privileged to escape.

Children and youth who participated as combatants in Sierra Leone's civil war faced similar survival dilemmas. Young people who had participated in the Revolutionary United Front's (RUF) campaigns in Sierra Leone indicated that incentives, such as food, education and work, had been offered by the movement and that this constituted a motivation to join. This was particularly the case for rural children and youth looking for ways to escape the hardships of war.¹² Nonetheless, it is generally agreed that insecurity increases the circumstances that result in child recruitment. For example, separation from parents and caregivers makes children more vulnerable to abduction, but poverty and hardship are also likely to push them toward seeking protection with armed groups.

The case of Sierra Leone, renowned for its numbers of child combatants, is often cited as an example of the brutal logic of the involvement of young people in civil war. What may have begun as a rebellion of a marginalised sector of the population against a government failing to cope with its expectations eventually produced the RUF, distinguished more by its cruelty than by its ambiguous political philosophy; a civil defence force whose leader, Chief Hinga Norman, who has since died while facing war crimes charges for his use of children as combatants and a beleaguered national army, none

of which, in the end, recognised boundaries between children and adults, soldiers and civilians. Sierra Leone's social landscape emerged ravaged as the country was brought to a standstill. The frustrated expectations of youth were brought full circle: the devastation brought by the war undermined the ability of not only the government, but communities and families, to protect their most vulnerable elements. By the time the war came to a definitive end, some 8 000 children were thought to have served in the three armed factions, along with the youth between 15 and 25 who made up the bulk of the forces. Again, the cumulative totals are difficult to estimate when child recruits are demobilised as adults. Such has been the crisis of children and youth in Sierra Leone that, shortly after the war, a Ministry for Youth was created and a national youth policy developed, very much intended as peace building measures.

The advent of peace in Sierra Leone, however, did little to address the regional dimension of the youth crisis. Many young veterans, frustrated by the shortfalls in reintegration programmes, went on to join forces with their counterparts in Liberia and Côte d'Ivoire. In 2006, Human Rights Watch alleged that the Ivorian Government was recruiting children from Liberia.¹³ Thus, beyond policy prescriptions, children and youth will gravitate towards armed conflicts for a number of reasons, including lack of socio-economic opportunities within economically weak and impoverished societies or conflict-prone regions.

IV. Youth Co-option: a Mark of Bad Governance?

If the measures to address the youth constituency in Sierra Leone came only after the devastation of civil war, elsewhere, pre-emptive efforts to contain the ambitions and energies of young people are not always in their best interests. One analysis of the role of youth during and after Zimbabwe's contentious 2002 elections suggests that:

...today's radically divisive rhetoric, incitement to violence and the occupation of farms are attempts to appease youth, who appear to constitute the greatest political threat to the party.¹⁴

Like Sierra Leone, Zimbabwe has a Ministry of Youth, shared with Gender Development and Employment creation, that concerns itself with the youth constituency by channelling it into a 'youth training programme', where it is alleged that participants are taught farming skills, but more importantly, are

politicised. The so-called Green Bombers, indoctrinated and armed young people responsible for racial, ethnic and political violence committed against opposition supporters and white farmers and their workers, are products of these training programmes. The involvement of the Zimbabwe African National Union - Patriotic Front (ZANU-PF) Youth League's involvement in political violence in elections from 1980 to the present, is well documented and has brought consistent condemnation from human rights organisations.¹⁵ The economic collapse that followed ZANU-PF's violent land reform programme is characterised by soaring unemployment figures and grinding poverty, factors that have given root to insurgencies elsewhere.

Nigeria, an economic powerhouse as the world's sixth, seventh or eighth largest oil exporter and Africa's biggest oil producer has been another poor example. Since crude oil began to be commercially exploited by foreign companies, notably Shell, Chevron, Agip and Elf, the indigenous inhabitants of the oil-bearing Niger Delta, under a variety of civil-society organisations, have pressured the government and the private sector to curb environmental damage and stop economic exploitation. The execution of activist Ken Saro-Wiwa under the military government of Sani Abacha in 1994 signified the beginning of a long and bitter struggle between communities and multinationals which, neither the new democratic government nor the oil companies, seem willing to, or capable of, resolving.

The state has responded harshly. Between 1998 and 1999, an escalation of violence in the region brought military occupation and culminated in the issuing of an ultimatum by civil society groups: withdraw the armed forces or there will be an escalation in violence. The protest movement, led in part by youth groups, resorted to sabotage of oil installations, kidnapping and the assassination of local leaders thought to be in collusion with the government and the multinationals. That youth were again at the forefront of agitation once again reflects the reality that leaders remain impassive and oblivious to the conditions that lead young people into violence. Augustine Ikelegbe, for example, writes:

Youth unemployment in the region is among the highest in the country, providing a fertile arena for the recruitment of young people into violent associations, all of which have become an important obstacle to the peace.¹⁶

In mid-August of 2006, the violence in the Delta showed every sign that it will carry on, with kidnappings of foreign workers continuing and multinationals

demanding better security to protect their installations, whose oil accounts for 40 percent of Nigeria's Gross National Product and 95 percent of the country's exports. Even though the groups responsible have been labelled terrorists by the President of Nigeria, the communities in the region continue to bear the high environmental costs of the industry, a situation that would scarcely be tolerated in a country where stringent environmental regulations are enforced. Moreover, the government seems intent on pursuing heavy-handed tactics against communities that have long been vocal about missing out on their share of the national wealth and there are fears that the violence will escalate further. Nigerians, it seems, are no more benefiting from their country's natural wealth than the people of Sierra Leone or the DRC. Thus, unless the governments of all three of these countries take seriously the need to invest the revenues from extractive industries in their people, especially children and youth, the futures of their children and youth will be bleak and will make them liable for recruitment and participation in national disputes and violent armed conflicts.¹⁷

V. Conclusion: Giving Back the Future

While it is problematic to see the choice to join an armed faction, made under the duress of war, as entirely voluntary, it is important to consider the 'push factors' that form an important element in recruitment dynamics. Not only are many children abducted and forced to serve armed groups, but they also make decisions and develop tactics in response to their environments. Examples of the participation of children in political youth wings, liberation movements, national armed forces and insurgent groups abound. It is not only on the frontlines where young people are active, and abduction and force are not the only incentives on offer.¹⁸ Today, young people across the continent are at the forefront of calls for social justice which, if ignored, will escalate into violent protest and civil war.

Nowhere is this reality hitting harder than in West Africa. In the decades of war that have ravaged the Mano River Union area - Liberia and Sierra Leone, as well as Cote d'Ivoire - all noted for the prominence of young people fighting in warring factions, children and youth have moved from one militia to the next, crossing borders in pursuit of the next conflict when peace dividends appeared to be yielding nothing for them. A 2005 report produced by the United Nations Office for West Africa (UNOWA) entitled: *Youth unemployment and regional insecurity in West Africa*, identifies youth

unemployment, rapid urbanisation and faltering economies as key causes for instability in the region:

The continued disregard of their aspirations may well provoke instability since youth are often at the forefront of denunciations of injustice and demands for reform.¹⁹

For researchers and policymakers who have worked to bring young people to the forefront of human security debates, this represents a long-awaited breakthrough. Moreover, the report connects the presence of young people fighting to that all-important link in civil wars: the plunder of natural resources that has sustained wars not only in West Africa, but throughout the continent, and especially the Great Lakes Region. Debates on peace and stability need urgently to turn their attention to the growing crisis of youth in Africa.

This chapter has attempted to demonstrate that the practice of child soldiering is a symptom of a much more serious problem with roots in governance and shortfalls in basic human rights. On a continent where over half of the population consists of children younger than 14, the direct involvement of young people - both children and youth - in conflict is inevitable.

Giving back the future to those whose childhoods have been stolen by war is only the beginning. If there is to be such a thing as accountability, the continent's largest stakeholder group must be its main target. History and current events show us that this group, although not always the most politically visible, is far from acquiescent. The appearance of children on the frontlines is a harsh indicator of the long-running damage behind them.

VI. Recommendations: realigning child and youth agency with peace building

In states with weak democratic institutions, and poorly performing economies, political power and resources can appear to young people to be in the hands of an older generation of elites who not only exploit the younger generation for economic gain, but mobilise young people as political and military support bases in a highly opportunistic fashion. Indeed, young people are consistently on the frontlines of election campaigns, armed rebellions and gangsterism and, in the past, independence struggles, only to be forgotten once the objective is achieved or ostracised in the event of failure.²⁰ The

expectations of youth in democratic transformations in Africa have been high and often disappointed.

Addressing the youth demographic is a daunting prospect, but one that was nonetheless addressed by the United Nations as early as 1996 with the adoption of the World Program of Action for Youth (WPAY) to the year 2000 (A/Res/05/81).²¹ The WPAY focussed on the socio-economic rights of youth, including education, employment, health care, participation in political life and a healthy environment. In the current African context, the Plan of Action looks in retrospect like a plan for conflict prevention, although this was perhaps not its intent. Nearly two decades later, the 2005 UN Department for Economic and Social Affairs World Youth Report details what appear to be the consequences of in-action. The report states that youth is the most criminally active segment of society, with criminality within this group having increased by 30 percent since 1995, and that this is linked most often to poverty and unemployment. While education levels have risen, so have unemployment figures. Furthermore, of the estimated 10 million young people living with HIV and AIDS, over half are living in Sub-Saharan Africa. The numbers of children under 18 involved in armed conflict have remained the same despite new legislation and state commitments.

One reason for the passive attitudes toward youth concerns may be that 'youth' lacks recognition as a category, given that it straddles customary and legal definitions of childhood and adulthood. Yet there is growing evidence that this group has well-defined, age-specific roles and needs and that the consequences of neglect constitute more than a humanitarian concern; they are also a security concern, an economic concern and a clear cause for a more explicit body of policy and allocations of resources that reflect the magnitude of the youth population.

There is an important point to be made here. While there has been some focus on the ways in which children and youth become agents of violence as a way of surviving, little is known about those who resist co-option. For every child or youth who joins a gang or armed group, there are thousands who do not. Little is understood about the ways they resist being drawn into violence. Is it simply a matter of different privileges and opportunities, of luck? Although it is widely accepted that recruiters often predate upon the social and economic vulnerability of youth, there are also those youth who manage to avoid it. The coping strategies of these young people have yet to be examined in any systematic way. If the challenges facing youth are to be

taken seriously, it is necessary to have a clear picture of their strengths and capabilities as well.

In this respect, peace building and conflict resolution offer unique opportunities for the re-alignment of youth agency. The WYAP points out that:

In taking on traditional adult roles and serving as soldiers, parents, heads of household and labourers, young people push the boundaries of gender and youth norms and create new social roles for themselves.²²

The disproportional burden borne by young people in conflicts does not only represent the sacrifice of their youth, of missed education, disrupted family life, poverty and hardship. It also indicates an assumption of responsibility, a resourcefulness and determination that should earn them a place at the negotiating table in peace processes, conflict resolution and in the formulation of policies that affect them. Inclusion is also a way of shaping the attitudes and building the skills and experience of young people that will equip them as stakeholders rather than passive recipients of policy, and of cultivating ideological commitments to peace and must be promoted.

Like their adult counterparts, youth have diverse interests in peace dividends and have been shown to revert to violence when these are frustrated. It cannot therefore be taken for granted that they are 'on board'; even less so if they are not explicitly represented. Perhaps the best illustration of a lack of incentives to peace was the recent migration of youth from conflict to conflict in West Africa; a consequence of the under-estimation and under-representation of a critical stakeholder group. Likewise, the conflict in the Niger Delta is spiralling out of control due to the ongoing exclusion and violent suppression of a major stakeholder group, whose original agenda has been obscured by the ever-popular label 'terrorism', the new, catch-all nemesis of predatory economic interests. Negative stigma and stereotypes clinging to youth organisations must be countered with a better understanding of their grievances.

Inclusion does not begin and end within the confines of humanitarian intervention and peace processes, nor within the sectors traditionally associated with youth, such as education, sport and culture. Policy 'hotspots' in Africa each need to be reviewed, in turn, for their relevance to, and inclusion of, young people. For example, inclusion means not foreclosing

on the futures of today's generation of young people by permitting the exploitation of resources without proportional social investment in education, employment creation, health and in maintaining a healthy environment. Discussions of governance and accountability need to be preceded by the questions 'for whom?' and 'to whom?' The aspirations and needs of the youthful populations that comprise 'the people' are still far from understood or acknowledged. History shows us that youth with truly nothing with which to negotiate follow the bush-path to the frontlines.

Notes

- 1 Machel, G 2001. *The Impact of War on Children*, Cape Town: David Philip Publishers.
- 2 The UN Youth defines youth as those between 15 and 24. Children are considered to be younger than 18 years. This paper will use the term 'youth' in accordance with this definition, as well as the term 'young people'.
- 3 Aboagye, Festus B 3 September 2006. *The Concept and Art of Indigenous Warfare* (To be published). Children were enrolled into regimental battle groups, or served in logistical trains, either as slave labour or under the tutelage of relatives. On occasions, they were either evacuated into safety or sacrificed as captives.
- 4 Hochschild, A 2006. *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa*. London: Pan Books, p. 233.
- 5 Op cit, p. 135.
- 6 See Amnesty International 9 September 2003. *Democratic Republic of Congo Children at War* [online], 1. Available at <http://web.amnesty.org/library/index/engaf620342003>.
- 7 Ibid.
- 8 Luke, TW 1982. *Angola and Mozambique: Institutionalising Revolution in Africa*. *The Review of Politics* 44 (3):413-436.
- 9 Leao, A and Continua, A L: *Children and Youth in Mozambique's Struggles*, in McIntyre, A (ed) 2004. *Invisible Stakeholders: Children and War in Africa*. Pretoria: Institute for Security Studies, p. 35.
- 10 Honwana, A. *Negotiating Post-war Identities: Child Soldiers in Mozambique and Angola*, in Bond, G and Gibson, N (ed) 2002. *Contested Terrains and Constructed Categories*. Colorado: Westview Press, p. 3.

- 11 Utas, M 2005. Victimcy, Girlfriending, Soldiering: Tactical Agency in a Young Woman's Social Navigation of the Liberian War Zone, *Anthropological Quarterly*, Spring, 78(2), p. 405.
- 12 See Peters, K 2006. *Footpaths to Reintegration Armed Conflict, Youth and the Rural Crisis in Sierra Leone*, Wageningen University, Netherlands.
- 13 See Human Rights Watch, http://hrw.org/backgrounders/africa/cote1205/3.htm#_Toc122774246
- 14 Lindgren, B 2003. Salisbury's Green Bombers. *Anthropology Today*, 19 (3).
- 15 Kriger, N January 2005. ZANU (PF) Strategies in General Elections, 1980-2000: Discourse and Coercion. *African Affairs*, p. 1.
- 16 Ikelegbe, A Spring 2005. Encounters of Insurgent Youth Associations With the State in the Oil Rich Niger Delta. *Journal of Third World Studies*, 22(1):151.
- 17 Rowell, A, Marriott, J and Stockman, L 2005. *The Next Gulf: London, Washington and Oil Conflict in Nigeria*. London: Constable and Robinson.,
- 18 See McIntyre, A (ed) 2004. *Invisible Stakeholders: Children and War in Africa*. Pretoria: Institute for Security Studies, p. 35.
- 19 UNOWA December 2005. Youth unemployment and regional insecurity in West Africa, [online]. Available at www.iydd.org/documents/iydd_docs/unemployment-insecurity%5B1%5D.pdf.
- 20 McIntyre, op cit.
- 21 See <http://daccessdds.un.org/doc/UNDOC/GEN/N96/771/43/PDF/N9677143.pdf?OpenElement>.
- 22 United Nations Department of Economic and Social Affairs 2002. *World Youth Report*, [online] Available at <http://www.un.org/esa/socdev/unyin/documents/wyr05book.pdf>.

CHAPTER 3

AFRICAN EXPERIENCES IN POST-COLD WAR TRANSITIONAL JUSTICE:¹ LESSONS FOR LIBERIA

Lydia Kemunto Bosire

I. Introduction

Increasingly, truth-seeking is becoming a strategy of choice in countries seeking to confront past human rights abuses following violent armed conflict or repressive rule. As part of 'transitional justice' initiatives, truth-seeking, it is argued, is necessary in combating impunity and advancing reconciliation. Transitional justice is frequently defined as comprising of prosecutions, truth-seeking, reparation and institutional reform. 'Reconciliation' is an often-stated objective of transitional justice, even though in itself it is a contested notion. Other frequently cited objectives of transitional justice include advancing 'accountability' and combating 'impunity'.²

Truth-seeking initiatives, the most common of which are truth commissions, are said to seek to fulfil victims' right to truth and to give the community as complete a version of history as possible. The UN Secretary General defines truth commissions as:

Official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years. These bodies take a victim-centred approach and conclude their work with a final report of findings of fact and recommendations.³

Beyond acknowledging victims, truth commissions can help identify perpetrators, establish an accurate account of history, and recommend reparation, institutional reform and prosecutions. They often give the victim a platform to confront perpetrators, and have sometimes also given perpetrators an opportunity to come forward and provide their account of events, or to acknowledge their atrocities and, in rare cases, to apologise. According to the UN Secretary General, truth-seeking can assist in efforts to:

establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparation and institutional reforms.⁴

Amnesty International estimates that at least 34 truth-telling initiatives have been implemented around the world in the last three decades. Most of these commissions have been established in an attempt to patch the impunity gap, that is, recognising both the need for 'effective remedy' for victims of human rights abuses, and the delicate politics and prohibitive economics of seeking accountability through prosecutions. According to Ralph Zacklin, the former UN Assistant Secretary-General for Legal Affairs, it is 'impossible' to envision tribunals being set up for countries such as Liberia, despite the abhorrent nature of the atrocities they have experienced.⁵

With this reflection in the background, it is reasonable to assume that Liberia's current truth commission is one of many similar projects that will be implemented in African countries in transition. For this reason it is important for those involved in the Liberian (and future) truth commissions to draw lessons from the experiments that have been implemented around Africa to date, and set about their task with modesty.

This paper starts by outlining the theoretical contribution of truth-telling to transitional justice. Subsequently, it analyses the challenges that have faced truth-telling efforts in Africa, and their implications on Liberia's new truth commission. Of particular relevance is the fact that transitional justice measures in Africa continue to be laden with high expectations, notwithstanding the mitigating realities of institutional deficiencies, poor and partisan leadership, and poverty. Further, in the near-absence of other complementary transitional justice efforts such as trials and reparations, many victims are left without redress, particularly as efforts towards vetting of human rights abusers continue to be slow and uneven; perpetrators remain in positions of power; and efforts to establish trust between government and the people through truth-telling continue to appear hollow.

The paper concludes that the gap between expectations and reality of the possible contribution of truth-seeking to accountability, justice and reconciliation should be narrowed by cultivating very modest expectations about what transitional justice can deliver, especially in the Liberian context of a long legacy of weak institutions, and social-economic disenfranchisement. Promising more than the commission can realistically deliver would be a

mistake that has been observed throughout Africa, from South Africa to Sierra Leone.

II. The Synergies of Truth-Seeking and Transitional Justice

Transitional justice has been defined as 'a field of activity and inquiry focused on how societies address legacies of past human rights abuses'⁶ during a period of definitive change in the political landscape. When regime change comes by negotiation with an outgoing regime, the new government can sacrifice the more ambitious goals of combating impunity in the interest of peace, stability and reconciliation. Increasingly, however, new regimes are making decisions to address the past, often using measures which include prosecutions, truth-seeking mechanisms, institutional reform and reparations.⁷

While prosecutions are considered to be the mainstay of justice, in contexts of wide-spread human rights abuses, prosecutions on their own have been thought to be insufficient to bring accountability, in part because they approach human rights abuses on an adversarial, case-by-case basis. At best, trials are said to only paint an incomplete picture of the past and offer equally incomplete justice.⁸ Besides, by placing the perpetrator at the centre, such initiatives can leave victims marginalised and unacknowledged. To remedy some of these shortcomings, prosecutions can be complemented by other, more victim-centric measures, chief among them being truth-seeking measures.

Truth-seeking mechanisms can provide an opportunity for society to have a broader understanding of past atrocities. With a long history in Latin America and made popular in Africa by the South African Truth and Reconciliation Commission, such commissions can give an opportunity to victims to relate their experiences, and for perpetrators to acknowledge responsibility. Truth-seeking efforts can be an acknowledgement of the fact that victims have a right to know the truth about the human rights abuses they suffered, and that the government has a duty to facilitate a process by which such truth is reached. Thus, government-sanctioned truth commissions have become a fairly frequent mechanism for truth-seeking through whose work a socially acceptable version of history can be reached, validating the experiences of many victims.⁹ There can also exist unofficial, civil-society-run commissions or projects with similar goals which can act as 'replacements, complements, or precursors' to official commissions.¹⁰

Flowing from such truth-seeking mechanisms can be socially acceptable definitions of victims, which may facilitate other mechanisms such as reparation programmes - by restitution, compensation and rehabilitation - which are, under international law, an obligation of the state to victims as a 'materialisation of recognition of responsibility.'¹¹ Truth-seeking mechanisms can shed light on the institutional deficiencies that led to the human rights abuses in the first place, thereby tasking the new administration in matters of vetting, as well as broader questions of institutional reform.

Truth-seeking is thought to be intimately linked with other measures of transitional justice. For instance, with appropriate agreements, evidence gathered from truth-seeking processes can be used to support prosecutions and determine beneficiaries for reparation programmes from the broader victim population. For maximum impact, some observers have recommended implementing transitional justice measures in an integrated package rather than as unrelated efforts. Failing to do so can minimise the credibility of the measures implemented. For instance, it has been suggested that reparation programmes executed without a detailed exploration of causes and effects of human rights abuses through a credible truth-seeking process can be unsatisfactory, just as reparation awarded without any attempt at judicial accountability can be seen as tainted.¹²

III. Lessons for Liberia

Translating reconciliation

Liberia's truth-seeking mechanism is a Truth and Reconciliation Commission. Most truth commissions - indeed, transitional justice efforts in general - describe themselves as centrally pursuing reconciliation, a multi-dimensional, contested notion. As such, the understanding of reconciliation embraced by a commission will affect the design of the transitional justice measures, and will ultimately form one of the bases upon which the success of transitional justice will be judged.¹³

Various understood, reconciliation is considered by some to be a prerequisite, as well as outcome of democracy, development and respect for the rule of law.¹⁴ Others associate the term with such notions as healing, forgetting, forgiveness, co-existence and apology. This contested notion is

described by Pablo de Greiff as fundamentally involving establishment of trust:

Reconciliation, minimally, is the condition under which citizens can trust each other as citizens again (or anew). That means that they are sufficiently committed to the norms and values that motivate their ruling institutions, sufficiently confident that those who operate those institutions do so in the basis of those norms and values, and sufficiently secure about their fellow citizens' commitment to abide by these basic norms [and] values.¹⁵

A key difficulty that confronts efforts towards the establishment of civic trust is the blurred distinction between the political project of reconciliation and the localised, culture-specific, inter-personal reconciliation. In South Africa, Tristan Ann Borer has observed that part of the difficulty of assessing the contribution of the truth commission to reconciliation stems from the lack of clarity about the meaning of the term.¹⁶ Restoring inter-personal relationships and bringing healing (individual reconciliation) can be a distinctly different undertaking from a political project of establishing state institutions with a respect for the rule of law and human rights, which ensures co-existence (national reconciliation).¹⁷ She observes that, stemming from the fact that neither the interim constitution nor the National Unity and Reconciliation Act provided a 'clear definition' of reconciliation; the term was imbued with different meanings at different times. While Archbishop Tutu and others raised public expectations of the truth commission's ability to deliver inter-personal reconciliation, the Truth Commission Act itself was a tool framed to deliver impersonal, political reconciliation.¹⁸

In Sierra Leone, Rosalind Shaw similarly observes that large sections of some communities did not come before the truth commission - despite being disproportionately affected by the war - because culturally, they did not believe that talking about the conflict before the nationally-directed project could lead to (inter-personal) healing and reconciliation.¹⁹ Here, many victims appeared more concerned with social reintegration of ex-combatants than with a public accounting of atrocities.²⁰

In Liberia, the TRC Act envisions the truth commission as a forum where 'both victims and perpetrators of human rights violations [can] share their experiences in order to create a clear picture of the past to facilitate genuine healing and reconciliation.'²¹ The Act also sees the commission as:

helping [to] restore the human dignity of victims and promote reconciliation by providing an opportunity for victims, witnesses and others to give an account of the violations and abuses suffered and for perpetrators to relate their experiences.

The meaning of such terms as 'genuine healing' is bound to be individual, and to imply that something so personal can be delivered by a political tool, will raise impossible expectations.²² Liberia's TRC should therefore learn from other examples and disaggregate the concept of reconciliation, as it is on the perceived achievement of this goal that the success of the TRC undertaking will be measured.

Over and above challenges related to definition, reconciliation can be seen as more than a sum total of the impact produced by the implementation of a comprehensive package of transitional justice measures.²³ For instance, strong moral leadership has been variously cited as having played a key role in the South African transition process, which is thought to have set in motion a process of national reconciliation. Yet many (African) countries do not have uncompromised and trust-inspiring leaders, such as former President Nelson Mandela and Archbishop Desmond Tutu, to give moral leadership to their transitions, a fact which can affect the credibility of any initiatives they support.²⁴ In Sierra Leone, Chief Hinga Norman, responsible for establishing and organising the Civil Defence Force (CDF), which is known to have committed numerous human rights abuses, was in government until his indictment for war crimes charges.²⁵ In Liberia, some of the key players in the current government are former warlords who have been largely implicated in human rights crimes.²⁶ It would not be surprising if this affects the legitimacy of the commission in the public eye, and subsequently its perceived contribution towards creating trust between citizens and state.

Another important variable upon which reconciliation is thought to depend is economic development. In the many cases where inequitable distribution of resources and abject poverty constitute some of the root causes - proximate - of war, continuation of economic marginalisation into the new dispensation can make sustainability of the transition tentative and fragile. Speaking in reference to Rwanda, former World Bank president, James Wolfensohn, recommended that there 'must' be an economic component to the reconciliation process in Rwanda,²⁷ to put flesh on the rhetorical bones. However, in no case in Africa has the reconciliation project been integrally linked with social and economic development of a significant manner. For instance, with regard to the South African commission, some

experts have maintained that redistribution of wealth was beyond its scope. In Liberia, the mandate of the commission asks for an inquiry into 'economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflict.'²⁸ It is difficult to see how this mandate can be rigorously interpreted without an infusion of creativity, given the traditional limits of a truth commission.

Truth Commission mandate: managing expectations

To a degree, the success of a commission depends on the extent to which it meets the expectations of victims and the society.

In this regard, the first challenge facing truth commissions in Africa - and, it must be said, facing transitional justice measures in general - is that of high ambition, which can lead to disappointment of the expectations of victims. Truth commissions often articulate lofty goals beyond the means of the commission, and sometimes even beyond political feasibility. Increasingly, truth commissions are seeking many different objectives. Contrast the mandate of the Chilean truth commission, which only sought to resolve disappearances and killings, with the mandate of the Burundi truth commission, which is supposed to assist in 'clarifying the entire history of Burundi', order restitution, propose institutional reform, and grant amnesty, all this in two years with a possibility of one year extension.²⁹ In the DRC, the truth commission is mandated to decide the 'fate of the victims of the said crimes, for hearing them, and taking all the necessary measures to compensate them and completely restore their dignity.'³⁰

Liberia's TRC Act is equally ambitious, tasked to 'promote national peace, security, unity, and reconciliation' by addressing a period that may extend beyond the starting time of 1979, if it seems appropriate. The goals above, if not clearly and consensually defined, can form a harsh yardstick against which to measure the success of the TRC at the end of the two-year mandate. While a broad mandate can be thought of as non-restrictive, it can also raise more expectations than can be met.

Another mandate-related challenge is the widespread use of amnesty.³¹ Often, amnesties are conditioned on a number of factors, chief among them truth-telling. In South Africa, leaders of the transition popularised the 'truth for amnesty' exchange with a promise that those denied amnesty for political crimes would be prosecuted afterwards. With the Apartheid government

controlling the security forces, such a compromise resulted from necessity. However, many assert that there has been a *de facto* blanket amnesty in South Africa as the first conviction for a person denied amnesty was only issued in February 2004.³² According to some observers, the particular case was chosen because of ease of prosecution rather than serving to illustrate any patterns of abuse. There continues to be speculations of further 're-opening' of the amnesty process, in other words, a hearing of more cases that were not brought forth by the deadline of the Amnesty Committee of the TRC to determine whether or not to grant amnesty. Furthermore, according to Amnesty International, 'although the amnesty process allowed the South African TRC to make important factual discoveries, it has generally been considered unacceptable in international law.'

Despite this finding, Liberia's truth commission also makes a provision for such a trade of amnesty for truth, as the commission has the power to recommend amnesty to 'individual persons making full disclosures of their wrongs and thereby expressing remorse for their acts and/or omissions, whether as an accomplice or a perpetrator.'³³ The worry among human rights groups is that the amnesty clause challenges the fight against impunity.³⁴ Given that South Africa has a much better judicial infrastructure than Liberia and yet it has still not been able to execute its threat to prosecute those denied amnesty, it is likely that following the South African model will result in a *de facto* blanket amnesty.

Truth Commission operations: moral and process benchmarks

The ability of truth commissions to meet their goals is vested as much in the process of truth-seeking as in the final report and recommendations. For this reason, such commissions must be seen to be as moral and just, representative and consultative, credible and open to public scrutiny, as possible. This pertains to all aspects of the commission's work and at all stages, including drafting the truth commission legislation and selecting commissioners and staff.³⁵

Especially important for the public relations of the commission is the selection of commissioners who, ideally, should be widely respected persons selected through an open process.³⁶ In many cases around Africa, however, the process is compromised. For the DRC, the Inter-Congolese Dialogue (ICD) resolution stated that the commissioners should be 'Congolese of great moral and intellectual probity and possessing the necessary skills to carry out the

mandate of the commission' and should be selected 'by consensus from the ranks of the components according to the criteria established by the Dialogue: moral probity, credibility....'³⁷ Despite these provisions, the commissioners were nominated by their political parties, with no regard for the Dialogue criteria or the consensus described in the truth commission resolution.³⁸ In Sierra Leone, the national commissioners of the truth commission were seen as sympathisers of the ruling Sierra Leone People's Party (SLPP). This view was further reinforced when, contrary to the recommendation of the truth commission that the president of the republic 'unreservedly apologise to the people for all actions and inactions of all governments since 1961,'³⁹ the chairman of the truth commission Bishop Joseph Humper supported the president's refusal to apologise. Further, at one point, the Bishop thanked the CDF militia, known for wide-spread abuses of human rights, for its work in defending the country.⁴⁰ All these political inclinations of the commission may have led to its being viewed as partial.

In Liberia, the truth commission started as a non-consultative, politicised project where, according to an Amnesty International report, the initial group of commissioners were appointed before the promulgation of the legislation of the commission, and therefore before the establishment of clear criteria for selection, without consultation with civil-society, and including at least one person with a questionable human rights record.⁴¹ Subsequently, there was a degree of damage control by the institution of a new process of selection overseen by ECOWAS. Nonetheless, it is reasonable to assume that the initial missteps have had an impact on the perceived credibility of the institution.

Secondly, it is a common expectation that truth commissions contribute towards restoring the dignity of victims. This may not always be the case: depending on how it is structured, truth-seeking processes can be traumatising, and even re-victimising. The Ghana NRC's judicialised hearings caused considerable discussion: victims gave testimony under oath, which was followed with questions by the commissioners, and subsequently cross-examination by the alleged perpetrators if present. Following such a cross-examination (either by the alleged perpetrator or the alleged perpetrator's lawyer) the alleged perpetrator received a platform to tell his or her side of the story. While the process played an important role in the attempt to reach an objective truth, some observers have commented that giving oft-powerful perpetrators a platform to cross-examine victims and possibly dispute their stories may not contribute to the process of dignifying the victim.⁴² Similarly, the Oputa Panel of Nigeria allowed alleged perpetrators to cross-examine victims, a situation which can be intimidating. At the time of writing this paper, Liberia is still in

its preparatory phase and has not yet held any hearings to fulfil its mandate, it will be important for the Liberian commission to take into account the pitfalls of the processes in other countries: hearings do not automatically restore the dignity of victims, they have to be strategically designed to do so.⁴³

The Final Report and beyond: implementing truth commission recommendations

After issuing a written report, the commission ceases to exist, often leaving no means by which the aspirations enshrined in the recommendations can be made widely known, much less followed-up by the government. In both Ghana and Sierra Leone, the final, multi-volume reports released by the truth-seeking bodies were not immediately made public, an issue which raised concern among many because if the population does not see the report, and is not fully informed, it is difficult for the citizenry to later hold the government accountable with regard to the implementation of the recommendations. The very form of the report as a written document can be inaccessible in victim communities with high illiteracy rates.⁴⁴ Even where the report is made public such as South Africa, very few members of the general public read it.⁴⁵ In Liberia, as of this writing - three months into the 24-month operational phase of the truth commission - the Commission has not hired senior staff members. There has not been a public work-plan, without which there are fears that promised funding may not be forthcoming. It is likely that the planning for the final report and its dissemination - the report being the culmination of the work of the commission - will be affected by the current delays.

Another challenge to be expected will arise from the recommendations, especially those around reparations, as mandated by the Liberia TRC Act. Under international law, there exists an obligation for states to give 'prompt reparation' to victims of violations of international human rights proportional to the harm suffered.⁴⁶ Further, reparation serves to recognise victims as citizens who are owed specific rights, communicating a message that a violation of such rights deserves action from the state; to contribute to the establishment of civic trust among citizens and between citizens and state institutions; and to build social solidarity where the society empathises with the victims.⁴⁷ However, recommendations about reparations are often some of the most challenging, because they demand an allocation of scarce resources by the state. In Sierra Leone, where the TRC law had

recommendations that were supposed to be binding, many of them are yet to be implemented.

Even a country with significantly more resources such as South Africa has had challenges to its reparation programmes. The Committee for Reparations and Rehabilitation (CRR) assessed payments, in the interim, for victims with 'urgent medical, emotional, educational and material/or symbolic needs', as well as final reparations. Many challenges were associated with such interim reparations. For instance, they were paid out very late; almost two years after the CRR recommendations were submitted to the government. They were also negligible in sum, thus disempowering to victims and a frequent source of friction and tension in the community, especially between those who received them and those who were left out of the programme.⁴⁸ After a long wait, final reparations were eventually allocated in amounts significantly lower than recommended by the CRR, with the government making a one-time payment of approximately US \$5 000, rather than a series of payments over a six-year period.⁴⁹

In Liberia, where the Act empowers the commission to make recommendations to the head of state with regard to 'reparations and rehabilitation' of victims, as well as to 'create a trust fund for the benefit of the victims and survivors of the crises,' the commission can expect challenges.⁵⁰ The biggest question is who are the 'victims' and 'survivors' of the Liberian conflicts, and what if they encompass the entire population of Liberia? In South Africa, 'the task of defining 'victim' and 'perpetrator'...was the single most important decision that determined the scope and depth of the Commission's work.'⁵¹ The narrow definition of violence that the truth commission adopted excluded structural violence, and a 'victim' was defined as the individual - and immediate family thereof - on whom 'gross violations of human rights'⁵² were perpetrated, which may have resulted in 'physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights.'⁵³ By using this definition, the TRC acknowledged 'only those violations suffered by political activists or state agents;' it excluded entire victimised communities.⁵⁴

Elsewhere, the definition of 'victims' has been politicised. In Ghana, for instance, pre-NRC redress measures were carried out to selective, partisan and incomprehensive rehabilitation for victims. The identity of the victims seemed to change with every administration; with each selectively rehabilitating victims who were political allies. In Liberia where there has been extensive use of child soldiers as well as abuse of female combatants,

many perpetrators are also victims.⁵⁵ It is not clear whether those who straddle the victim/perpetrator definition would be eligible for reparations.

However, it is important to point out that reparations can never restore victims to the *status quo ante*. For that reason reparations can only be a part of a package of transitional justice measures which may include institutional reforms, prosecutions and truth-seeking. In the absence of such an integrated approach, observers have remarked that reparation is likely to be seen as an attempt at buying acquiescence - unless accompanied by prosecutions - or as inadequate gestures of little long-term consequence - unless coupled with institutional reform.⁵⁶

The reform of the security sector, often the most implicated in human rights abuse (and targeted by truth commission recommendations), can offer particular challenges. One report describes the security sector in Liberia as having very little public confidence because it was largely politicised by successive governments, of 'questionable professionalism,' and centrally implicated in the human rights abuses during the war.^{57 58} However, the reform efforts of the army and the police have been disjointed, with potential ramifications on the long-term coherence of the sector. Initial reform efforts have focused on the police, eliciting criticism that the reform of the Armed Forces of Liberia (AFL), despite being centrally implicated in human rights abuses, was not undertaken as a priority.⁵⁹ In line with the trend of assigning armed forces reform to bilateral rather than multilateral arrangements, the reform of the AFL is undertaken by the US and subcontracted to a private military company, DynCorp, raising questions about transparency and long-term impact of such privatised security reform.⁶⁰

These initial challenges point to the need for the truth commission to make robust recommendations for further institutional reform, including the security sector, in line with the commission mandate, and for other stakeholders to assist the country in implementing the recommended reforms. Without adequate institutionalisation, maintaining the gains from the implementation of transitional justice measures may be difficult.

Contextualising Liberia's Truth Commission: the Taylor dynamic

It is envisioned that the truth commission will play a central role in transitional justice in Liberia, given the muted nature of the discussions on prosecutions. For that reason, there have been a number of concerns with regard to the

transfer of former president Charles Taylor to The Hague. The concerns are based on the impact of such transfer on the truth-seeking and transitional justice process in Liberia and the West-African region as a whole. While his physical location potentially reduces insecurity and increases the likelihood of victims coming before the commission, it reduces the possibility of his answering any summons before the truth commission. In fact, it is thought that the Special Court of Sierra Leone under whose jurisdiction the trial of Charles Taylor is to take place, may not consider such a summons, given the experience of Sierra Leone with the case of Sam Hinga Norman.⁶¹ In addition, the physical transfer also removes Liberians from the reach of the trial, even while this is likely to reveal, arguably, the most important evidence about patterns of human rights abuse in Liberia and the sub-region.

IV. Conclusion

Truth-seeking is increasingly becoming a popular stop-gap measure for addressing the impunity gap. So popular is the mechanism that there is even a suggestion of creating a permanent Truth Commission to explore international conflicts, as well as 'other kinds of international wrong-doings and problems', in particular including colonialism and third world debt.⁶² In the pursuit of stability, democratic consolidation and long-term reconciliation, truth-seeking measures can help to clarify, and make recommendations about the root causes of violence and abuse. However, often implemented in contexts of political compromise and limited resources, truth-seeking measures do appear to lack good faith and are unable to meet the legitimate expectations of victims of human rights abuses for justice and reconciliation. Furthermore, the economic dimensions of conflict and repression can have consequences on the demand for reparation and the possibilities of reconciliation.

While the Liberian Truth Commission Act states that 'all recommendations shall be implemented,' experiences of truth-telling in Africa tells us that the contribution of the truth-telling exercise to the larger, complex picture of accountability and reconciliation can only be modest. In the absence of comprehensive transitional justice interventions taking place in a context of state institutions capable of inspiring trust and implementing economic changes, the impact of truth-seeking initiatives on a long-term search for justice, accountability and ultimately the stability of post-conflict African states, will continue to be modest. This modesty must be conveyed in the outreach strategy of the commission, in order not to unhinge efforts

towards durable peace in Liberia and other countries in transition from war to peace.

Notes

- 1 A complete version of this paper will be published by the International Centre for Transitional Justice, www.ictj.org. This paper was guided by discussions which took place at a Canadian International Development Agency (CIDA)-funded meeting in Bellagio in April 2004, with leaders of African NGOs from countries in transition.
- 2 For more on reconciliation and the contribution of justice-seeking (including truth-telling) to its achievement, see de Greiff, P. *The Role of Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted*, in Gibney, M and Howard-Hassmann, R (eds) (forthcoming). *The Age of Apologies*, This is the sense in which the term is used in this paper.
- 3 United Nations. Report of the Secretary General on The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies. UN Doc. S/2004/616 (2004), xiv, Para. 50. Also see Hayner 2001. *Unspeakable Truths: Facing the Challenges of Truth Commissions*. New York: Routledge.
- 4 Ibid, para. 50.
- 5 See Amnesty International 22 June 2005. *Liberia: Truth, Justice and Reparation - Memorandum on the Truth and Reconciliation Commission Act*. AI Index: AFR 34/005/2006, pp. 5-6. See Zacklin, R 2004. *The Failings of Ad Hoc International Tribunals*. *Journal of International Criminal Justice*, 2:545.
- 6 Macmillan's Encyclopaedia of Genocide and Crimes Against Humanity, October 2004, s.v. 'transitional justice.' Also see Kritz, N 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington: US Institute for Peace.
- 7 While this section introduces the mechanisms of transitional justice and their objectives, it only dwells in greater depth on truth-seeking.
- 8 Even the best funded prosecutorial measures such as the ad-hoc tribunals of both Rwanda and Yugoslavia have limited reach and impact.
- 9 For more on Truth Commissions, see Hayner, Priscilla B. 2001. *Unspeakable Truths: Facing the Challenge of Truth Commissions*. New York: Routledge.
- 10 See Bickford, L (nd). *Unofficial Truth Projects* (manuscript).
- 11 De Greiff, P (ed) (forthcoming). *Repairing the Past: Compensation for Victims of Human Rights Violations*.

- 12 Ibid.
- 13 Among other objectives, in a long wish-list including such objectives as justice, reconciliation, accountability, democratisation, development, etc.
- 14 Gerhard Gahima observes that for Rwanda, democratisation, inclusive government and general increase of freedoms will be necessary before there can be real national reconciliation. Gerhard Gahima, Interview with author, May 17th 2005. On the other hand, the World Bank president, James Wolfensohn, has observed that (national) reconciliation is a prerequisite for development. See IRIN News, 'Rwanda: Reconciliation Essential for Development, says World Bank Head', July 16 2002.
- 15 De Greiff, P. *The Role of Apologies in National Reconciliation Processes*.
- 16 Borer, T A Fall 2004. *Reconciling South Africa or South Africans? Cautionary Notes from the TRC*. *African Studies Quarterly*, 8 (1),. For a broader treatment of the subject and the various ways in which it may be understood, see de Greiff, P. *The Role of Apologies in National Reconciliation Processes*.
- 17 The two dimensions of reconciliation can complement each other in obvious ways. National/political reconciliation and constitutionalism can enable inter-personal reconciliation to take place, but the prerequisite of such a political reconciliation is not that individuals in the political space like each other and be reconciled, but that their relationships are mediated by uniformly applicable laws. Borer (2004) makes an important recommendation about processes being explicit and clear as to which type of reconciliation they pursue, to avoid confusion.
- 18 Borer, op cit, p. 32.
- 19 Shaw, R February 2005. *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*. United States Institute for Peace, Special Report 130.
- 20 In other words, it is possible that sections of the population understood the reconciliation advanced by the national truth commission at the inter-personal level, and found it unable to meet their expectations, or even contrary to their cultural practices.
- 21 Article IV, Section 4(b).
- 22 Article VII, Section 26(f).
- 23 De Greiff offers that even if trials, truth-seeking, vetting and reparations were all executed with some degree of success, the society would not automatically be reconciled.
- 24 The issue of moral leadership is separate from, but related to, vetting discussed above.

- 25 The former defence minister, to whom Chief Norman reported during the civil war, is the current president of Sierra Leone.
- 26 See Human Rights Watch, *Combating War Crimes in Africa*, "Testimony of Corinne Dufka before the US House International Relations Committee, Africa sub-Committee. June 25, 2004. Also discussion with Butty Williams of True Witness, Liberia.
- 27 'President Kagame Commends Rwanda-World Bank Relationship,' Government of Rwanda, [online] Available at <http://www.gov.rw/government/071602.html>. The World Bank President stated: '...to stop the anger and bitterness, you must build hope.'
- 28 Article IV, Section 4(a).
- 29 Arusha Accord, Preamble, Article 8
- 30 Inter-Congolese Dialogue, Resolution DIC/COR/04 Also Loi no. 04/018 du 30 Juillet 2004 portant organisation, attributions et fonctionnement de la commission verite et reconciliation, 1er Aout 2004, Article 41 (on file).
- 31 For more reasons why amnesties can be undertaken as a political choice, see van Zyl, P. *Justice Without Punishment: Guaranteeing Human Rights in Transitional Societies*, in Villa-Vicencio, C and Verwoerd, W (eds) 2000. *Looking Back/Reaching Forward: Reflections in the Truth and Reconciliation Commission of South Africa*. Cape Town: UCT Press, pp. 42-47; and Majzub, D October 2002. *Peace or Justice? Amnesties and the International Criminal Court*. Melbourne Journal of International Law 3: 251-252.
- 32 Conversations with Madeline Fullard about the case of Gideon Nieuwoudt (see Centre for Studies of Violence and Reconciliation, Press Release, 11 February 2004). For more on the case, see US Department of State, South Africa: Country Practices on Human Rights Practices-2004. Released by the Bureau of Democracy, Human Rights, and Labour 28 February 28 2005, Section 4, [online] Available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41627.htm>.
- 33 TRC Act, Article VII, Section 26(g).
- 34 Amnesty International Paper, pp. 20-21.
- 35 See Orentlicher, *Updated Principles*, Principles 6-13. Further, See United Nations, Report of the Secretary General on The Rule of Law, para. 51.
- 36 Boraine, A 2000. *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* Oxford and New York: Oxford University Press, pp. 71-72.
- 37 Inter-Congolese Dialogue, para. 10.
- 38 A section of the law provides for appointment of 13 more commissioners onto the TRC. The proposed changes in the composition of the commission are not

- likely to redeem the credibility of the commission. See Borello. *A First Few Steps*, pp. 41-42.
- 39 Sierra Leone Truth and Reconciliation Commission, *Reparations*, para. 197.
- 40 Shaw, R February 2005. *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*. United States Institute for Peace, Special Report 130. p. 5.
- 41 Amnesty International, *Liberia: One Year after Accra - Immense Human Rights Challenges Remain* AFR 34/012/2004, 18 August 2004. Amnesty International reported that 'one of those appointed [as commissioner for the truth commission] emerged as a high profile figure within the LURD, leading to calls for his resignation.' Liberians United for Reconciliation and Democracy (LURD) was a party to the conflict.
- 42 In contrast, the Ghana commission recreates the court room scenes in its NRC. However, others have stated that the victims do score a victory even when they are designated as witnesses, their testimony compelling a (most likely) socially elevated perpetrator to come before the NRC. Besides, some people may find this formal, court-like setting empowering.
- 43 Outside the region, the Truth Commission of Peru went out of its way to change the social relations when carrying out public hearings. The commissioners, typically men and women of high social stature, sat on the same level and table as victims, and stood as victims walked into the room. Victims were uninterrupted as they gave testimony and not cross examined.
- 44 Sierra Leone proposed to have a 'popular' and 'children' version to their commission's final report, both of which would be in written form, in addition to a video version.
- 45 This is very different from the TRC report of Argentina, for instance, which was a best seller; although this in itself does not necessarily mean that it was widely read.
- 46 United Nations, United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (19 April 2005), para. 11.
- 47 De Greiff, *op cit*.
- 48 See Colvin, C J. *Overview of the Reparations Program in South Africa*, in de Greiff, P. *Repairing the Past*. Also see Crawford-Pinnerup, A. *An Assessment of the Impact of the Urgent Interim Reparations in Hamber, B and Mofokeng, T* (eds) 2000. *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa*. Johannesburg: Centre for

- the Study of Violence and Reconciliation.
- 49 The government allowed the payment of final reparations of a total of US\$80 million, much less than the US\$400 million recommended by the TRC. This low payment may have political reasons, over and above the resource shortage discussed here.
 - 50 Liberia TRC Act, Article VII, Section 26 j(i), and Article IX, Section 38.
 - 51 See Mamdani, M Fall/Winter 2002. Amnestiy or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC). *Diacritics* 32:3-4 at 33.
 - 52 The Promotion of National Unity and Reconciliation Act, 1995, Chapter 1 (ix).
 - 53 The Promotion of National Unity and Reconciliation Act, 1995, Chapter 1 (xix).
 - 54 Mamdani, M at 38.
 - 55 In Liberia, UN Agencies estimate that more than 15 000 children have been used in the fighting. For more on child combatants in Liberia, see Human Rights Watch, *How to Fight, How to Kill: Child Soldiers in Liberia*, 16, no. 2(A), Feb. 2004.
 - 56 For more elaboration on the important variables on the design of reparations, see *Ibid.*
 - 57 For more elaboration on the important variables on the design of reparations, see *Ibid.*
 - 58 See Aboagye, Festus B and Rupiya, Martin R. Enhancing post-Conflict Democratic Governance through Effective Security Sector Reform in Liberia, in Aboagye, Festus B and Bah, A M S (eds.) May 2005. *A Tortuous Road to Peace: The Dynamics of Regional, UN and International Humanitarian Interventions in Liberia.*, Pretoria: Institute for Security Studies, pp. 258-260.
 - 59 UNMIL was mandated to assist in reforming both the military and the police. See UNSCR 1509 (2003), S/Res1509, 19 September 2003, Section 3(n) and (o). According to Aboagye and Rupiya, UNMIL's resources and capacity would not allow it to focus on the army. In their view, the armed forces of Liberia (AFL) were at the root of the war and should have been the centre of the reform effort: 'It is paradoxical, that the reform of the AFL, which bears the greatest responsibility for the country's misfortune, should be last on the peace building agenda....' See Aboagye, Festus B and Rupiya, M. Enhancing post-Conflict Democratic Governance through Effective Security Sector Reform in Liberia,, in Aboagye and Bah (eds) 2005, *A Tortuous Road to Peace: The Dynamics of Regional, UN and International Humanitarian Interventions in Liberia*, op cit, pp. 260 and 264.

- 60 Aboagye and Rupiya, op cit, pp. 264-265.
- 61 See Special Court for Sierra Leone, Decision by the Truth and Reconciliation Commission of Sierra Leone to Conduct a Public Hearing with Samuel Hinga Norman, SCSL-2003-08-PT-101, 29 October 2003.
- 62 See Forsbert, T and Teivanen, T 2004. Past Injustice in World Politics Prospects of Truth-Commission-Like Global Institutions, *Crisis Management Initiative*, Helsinki, p. 26.

CHAPTER 4

TOWARDS SUSTAINABLE PEACE AND SECURITY IN AFRICA: THE CHALLENGES OF SECURITY SECTOR REFORM IN POST-CONFLICT SIERRA LEONE

Adedeji Ebo

I. Introduction

Deficits in the operational efficiency and democratic governance of the security sector in Africa is an incubating factor for conflict, and sustains and pronounces those conditions that were the root causes of conflict in the first place, undermining and obstructing security and development.¹ One of the main obstacles to sustainable peace and security in Africa is the exploitative and predatory relationship between security institutions of the state and the general population, in which the latter are more victims than beneficiaries of ill-motivated, ill-trained and ill-governed security institutions. Indeed, the record of security institutions in several post-colonial states in Africa justifies the conclusion that they function more to threaten, than to protect the basic human needs of the populations which they ostensibly serve.² Thus, reform of the security sector represents a major element in peace building - both pre- and post-conflict - and it is a tragic irony that the characteristic complete collapse of the security apparatus in post-conflict situations following protracted conflict, often provides an enabling environment for fundamental changes, arguably, the transformation of the security sector.

The Sierra Leonean post-conflict reconstruction (PCR) process, particularly the security sector, is widely presented as one of the more successful efforts at external intervention.³ In this regard, it is a significant milestone that in September 2004, the Government of Sierra Leone (GoSL) was able to take over country-wide security primacy from the United Nations Mission in Sierra Leone (UNAMSIL). Indeed, the return of public safety has been the combination and culmination of a DDR programme, restructuring of the security sector, the restoration of civil authority throughout the country, and enhanced state control of diamond mining. The withdrawal of UNAMSIL in December 2005, and its replacement with United Nations Integrated Office in Sierra Leone (UNIOSIL), with effect from January 2006 - United Nations Security Council Resolution 1620 (2005) - provides evidence for the consensus that Sierra Leone is on a potentially sustainable transition from war to peace.⁴

While the security sector reform (SSR) process in Sierra Leone manifests significant achievements and positive results, some operational and, particularly, governance deficits remain which are worthy of emphasis as a necessary condition for peace consolidation. Much of the gains of post-conflict reconstruction in Sierra Leone remain fragile. Claims of a 'success' story need therefore to be made in guarded and subtle tones.

The paper reviews the main elements of Sierra Leone's SSR process, measuring these against the imperatives of a responsive and responsible security sector.⁵ The paper is composed of five main parts. This introduction is followed by an overview of the SSR process, elucidating the context, rationale and major features of security sector reform in Sierra Leone. Relating governance deficits in the security sector to distortions in the broader political economy, the paper, in the third section, discusses the strategic and operational changes in the security architecture and posits that the participatory approach of the SSR process, the operationalisation of the security-development nexus, and the focus on decentralisation are positive features of the Sierra Leonean SSR process. The paper notes, in the fourth section, however, that significant gaps remain, such as entrenched mindsets, donor dependency, the rising uncontrolled emergence of privatisation of security, issues of transitional justice, and the need to more vigorously address the 'youth question' as a *sine qua non* for sustainable peace and democratic governance of the security sector in Sierra Leone. It is then concluded, in the fifth part, that in the final analysis, security institutions are a mirror of society. SSR can therefore only be, to a large extent, as successful as the broader post-conflict reconstruction framework.

This paper recognises the broad range of the security sector as enumerated above. In this regard, it is necessary to emphasise the paper's limited scope. Issues of correctional services are not treated in this paper, neither is the role of non-state actors discussed in any detail. Issues of correctional services are central to security sector reform because they could either function to prepare those who commit crime for reintegration into society or, and often do, function as crime academies, where criminals learn to become better criminals. It therefore deserves more focused research and policy attention. In addition, the role of civil society in the security sector reform process in Sierra Leone, though widely seen as a deficit, does not receive detailed attention in this paper. These remain inherent aspects of security sector reform which should form the focus of further research.

II. Overview of Post-Conflict Security Sector Reform

The security sector in Sierra Leone before the war was largely ethnically based, patrimonial in character, executive-dominated in governance and, like all other components of the public sector, in a comatose state.⁶ Recruitments and promotions within security institutions and the governance of the entire security sector was more a function of party political, ethnic and inter-personal affiliations than objective professional performance yardsticks. Inadequate and irregular remuneration fuelled corruption and gross abuses of office. The governance of the security sector was primarily conditioned by a focus on state regime security, which demonstrably militated against operational coherence and accountability. In the bid to guarantee the unwavering loyalty of security institutions to the ruling party, alternative security institutions were established, resulting in inter-institutional rivalry and a concomitant self defeating security sector within the state. The seeming stability of the immediate post-independence period was short-lived, a victim of one party rule of the All Peoples Congress (APC), declared in 1971 under the leadership of Siaka Stevens. The 1967-68 coup appeared to have affected Stevens's confidence in the loyalty of security institutions. Hence, he actively sought to de-institutionalise the state. The rule of the state became increasingly personalised, and Stevens created an alternative security system through the Internal Security Unit and later the Special Security Division. To be sure, governance deficits in the security sector negatively affected operational efficiency *cum* security democratic governance. This situation precipitated, prolonged and complicated the protracted civil conflict that ensued.

Illustrative of other West-African states, the security sector in Sierra Leone has been influenced by its colonial history, and therefore has a heavy British institutional imprint. Over the years since independence, a wide gap emerged between ordinary Sierra Leoneans and the security institutions which were ostensibly created to protect them, but which often served to threaten them.

In consonance with the historical relationship between Sierra Leone and its former colonial metropole, the Sierra Leone Security Sector Reform Programme (SILSEP), which was introduced in 1999, funded and managed by the UK Department for International Development (DFID), has had a defining impact on the SSR process. In August 2003, a Working Group on Security Sector Review was commissioned by the President 'to assess threats to progress in Sierra Leone as it recovers from the war, and to formulate a comprehensive national security architecture that can cater for Sierra Leone's

national security.⁷ In May 2005, the government launched what President Kabbah described as ‘three key security sector reform documents for Sierra Leone’:

In brief, the first document, the Security Sector Reform 2005 Report, provides the long-term roadmap for the security sector and prescribes the overarching strategy for transformation of the security forces. The second document, the Protective Security Manual, has been prepared to show us the measures we need to take to protect our key national assets and information apparatus. The third document is the Standard Response Guidelines for the National Security Architecture. The document provides us with a holistic approach to the structure and composition required for effective civilian democratic governance, co-ordination and oversight of our national security.⁸

A major outcome of the security review relates to the analysis of threats facing Sierra Leone and the implications for security policy. This was detailed in the Poverty Reduction Strategy Paper (PRSP) and reflected in the SSR Review Report as follows:

Government recognises that the threat to security in this post-conflict period is largely internal. The implication for strategy in the security sector is that the state needs a smaller but more robust and flexible Republic of Sierra Leone Armed Forces (RSLAF) and a larger Sierra Leone Police (SLP) which has a primary role in maintaining internal law and order.⁹

The Security Sector Review Report captures the statutory composition of Sierra Leone’s post-conflict security architecture as follows:

By law, Sierra Leone’s security architecture revolves around nine key security state actors: RSLAF [Republic of Sierra Leone Armed Forces], SLP [Sierra Leone Police], Prisons Department, the National Fire Authority, the Immigration Department, the Central Intelligence and Security Unit; the Office of National Security (ONS); the National Security Co-ordinating Group (NSCCG), and the National Security Council.¹⁰

Sierra Leone Police (SLP)

Like the Liberian Frontier Force (LFF), the fundamental shortcoming of the Sierra Leone Frontier Police from which the SLP takes its origins, is the fact that colonial security institutions had been created not to defend the inhabitants against attack, but to assist foreigners to conquer and control the country.¹¹ Not only is the people’s perception of the SLP shaped by its colonial antecedents, but its organisational practices also derive from its colonial background. The SLP was established following the founding of Freetown in 1808. By 1889 colonial authority had been extended to the provinces then known as the Hinterland or Protectorate and police authority was extended as well.¹² Whether through the framework of the Commonwealth or through bilateral channels, British support to the SLP (financial and personnel) remains prominent.¹³

At the end of the country’s civil war, the police service was in a dilapidated state, but it has since witnessed positive institutional changes, with heavy international support. Until recently, much of the reform of the SLP has been largely under the auspices of the Commonwealth Community Safety and Security Project which began in 1998. The Commonwealth Police Development Task Force was largely responsible for devising the SLP restructuring programme. A new Police Charter was released in 1998 which focused on respect for human rights, provision of reliable and accountable services, equal opportunities, and professionalism. From 1999-2003, the SLP was led by a British national (Keith Biddle) as the Inspector General of Police (IGP), whose initiatives have contributed to better corporate image and institutional culture.

These have emerged from the establishment of a Community Relations Department, a Complaint, Discipline and Investigation Department, and the ‘Family Support Units’ Terms of Reference have been concluded for the absorption police reform into the Sierra Leone Security Sector Reform Programme (SILSEP). The objective is to:

Establish an effective, well co-ordinated, non-political and democratically accountable Police Force whose role and priorities are aligned with the overarching aims of the security sector as a whole, as articulated in the Security Sector Review and the SLP Strategic Plan.

The formal absorption of the SLP reforms into the SILSEP was expected to begin in June 2006, for a two-year period, with the possibility of a further six months' extension.¹⁴ The SSR Report sets a target strength of 9 500 personnel for the SLP. The graduation of an additional 405 recruits in February 2006 raised the SLP strength to 9 267 personnel.¹⁵

Republic of Sierra Leone Armed Forces (RSLAF)

The Sierra Leone armed forces evolved from the Royal West African Frontier Force (RWAFF), a multi-battalion field force, formed by the British Colonial Office in 1901 to maintain internal security against warring tribes and to defend the colonial frontiers.¹⁶ Although local chiefs were, under the system of indirect rule, allowed a certain level of independence, security policy and its institutions were in British hands. The RWAFF was disbanded in 1960 with the move to independence of the colonies. The former RWAFF units formed the basis for the new national armies of the respective countries - Ghana, Nigeria, Gambia and Sierra Leone. Thus, the Republic of Sierra Leone Military Forces (RSLMF) was heavily influenced by British military doctrine, drill, uniforms and tactics. In spite of its new official designation as the RSLMF, the force has maintained its British link. Ten thousand soldiers had been provided basic military training by 2001 and help in the administration of the military is given through the International Military Advice and Training Team (IMATT), with prominent British presence, leadership and influence.

The SSR review further recommended a mandate for the army to focus on the protection of the territorial integrity of Sierra Leone. In addition, however, under the 2004 Military Aid to Civil Power (MACP) policy, the army may also provide support to the SLP when deemed necessary and appropriate by the political authority. Similar to the SLP and indeed the entire SSR process, reform of the RSLAF has been with strong international, particularly British, involvement and support. This may be said to have started with the introduction of SILSEP in 1999. With the arrival of the IMATT in 2000 to help repel rebel attacks and restructure the army, British presence became more prominent, with IMATT officers occupying key command positions. The mission of IMATT is to:

Assist with the transformation of the Republic of Sierra Leone Armed Forces (RSLAF) into a self-sustaining, democratically accountable and affordable force in order that it can meet Sierra Leone's defence

missions and tasks and to facilitate the phased disengagement and withdrawal of IMATT.¹⁷

IMATT has been directly instrumental in enhancing the professionalism and mission readiness of the RSLAF, establishment of a Ministry of Defence under joint civilian-military management, equipping the RSLAF, and improving the working and living conditions of its personnel, including the building and refurbishing of barracks.¹⁸ IMATT is expected to continue operations until 2010 at the earliest.

District and Provincial Security Committees

As part of an overall decentralisation policy of post-war reconstruction, Provincial Security Committees (PROSECs) and District Security Committees (DISECs) were established to serve as early warning mechanisms at community levels. According to the SSR Report, PROSECs are security committees for each province of the country, based in each provincial capital, and using open-source material to provide early warning to the Government of the existence or likelihood of any security threat to the province, the country, or the Government. PROSECs submit fortnightly reports to the Joint Intelligence Committee (JIC).¹⁹ DISECs are the equivalent security structure at the district level, and submit weekly reports through their respective PROSECs.

Office of National Security (ONS)

Established under the National Security and Intelligence Act (2002), the Office of National Security (headed by a National Security Co-ordinator) co-ordinates the activities of all security agencies, oversees the work of the security committees (PROSECs and DISECs), and acts as the Secretariat of the National Security Council, which is chaired by the President. Effectively, the ONS is the nerve centre of Sierra Leone's post-war security architecture.

III. Positive Elements of Security Sector Reform in Sierra Leone

Conceptualising security

In terms of a democratic framework for security sector governance, it is noteworthy that policy statements from the highest political levels in Sierra Leone indicate a more people-centred security agenda. Apart from the three main SSR documents cited above, all reflecting a participatory and an accountable security framework, a clear sense of policy direction and leadership has been provided by the political leadership which has contributed to a strategic impetus for more inclusive governance of the security sector in Sierra Leone. The country's President has on several occasions given clear indication of a new approach to the conceptualisation of security. This represents a significant break with the inglorious past of exclusivity, victimisation, and abuse of human rights, under the pretext of maintaining and restoring national security. According to the President 'security is no longer a 'secret', it is a public service, requiring public support'.²⁰

Participatory and 'capacity building' methodology

The methodology for conducting security sector review provided ample opportunities for contributions from a wide representation of Sierra Leoneans. Of particular significance were the country-wide consultative workshops organised by the SSR Secretariat. The Working Group was itself representative and included ministries, civil-society, anti-corruption commissions, security institutions, technical advisers, the academia, and professional associations. Consultative workshops, involving a total of 142 persons, were also held in the country's three provinces: 40 participants in the Southern Province, 47 in the Eastern Province and 55 in the Northern Province. The involvement of civil-society groups in the process is a more significant aspect of the process. The consultative workshops included religious groups, the press, serving and retired security personnel, ex-combatants and traditional chiefs.²¹ Moreover, the process provided invaluable capacity building experience for members of the Working Group, which was directly responsible for facilitating the process and preparing the report, albeit with external technical support.

Operationalising the security-development nexus

Within the broader framework of Sierra Leone's post-conflict reconstruction agenda, Security Sector Reform is at the core of the first pillar of the country's poverty reduction strategy, as a deliberate matter of government policy.²² According to the President:

The underlying tenet is that security is the umbrella under which peace and development can thrive. It is therefore no accident that the Security Sector Review (SSR) forms the detail of the first pillar of the PRSP - and this is for the first time ever.²³

In programmatic terms, such a security-development link is directly significant for policy implementation, and the prioritisation of targets and objectives. This innovative integration of SSR into poverty reduction strategies is groundbreaking, and operationalises the security-development nexus within the broader reconstruction framework:

Once the Security sector review was formally approved and enshrined within the Poverty reduction Strategy Process, the recommendations contained within have been operationalised in the form of a Security Sector Review Implementation Plan. The Office of National Security has co-ordinated this process and produced an implementation plan that was submitted to the Consultative Group Meeting in London in November (2005).²⁴

Decentralisation

Emphasis on decentralisation of security apparatus with the creation of DISECs and PROSECs, at least in theory, bridges the gap between security provision/governance and the populace, and enhances the basis for accountability and transparency. The early warning roles ascribed to the PROSECs and DISECs are particularly relevant in a post-conflict context with a need for emphasis on preventive peace building.

IV. Lessons Yet to be Learned

Political economy of post-conflict reconstruction

The post-conflict reconstruction of Sierra Leone, including and particularly of the security sector, needs to be reconciled with the political economy which underpins it. Ranking at the bottom of the 2004 UNDP Human Development Index (HDI), Sierra Leone's well-articulated programme is heavily dependent on external funding and, to a significant extent, expertise. It is very much what Gbla has aptly described as 'SSR under international tutelage'.²⁵ While there are indications of long-term support to the SSR process, the economy that would be essential to consolidate and sustain the benefits of reform is seriously handicapped. The state faces the risk of running out of funds to pay salaries, in the absence of significant donor inputs, in the near future.²⁶ The war indeed has ended, but more than five years later, there has not been much visible peace dividend in the lives of ordinary people. According to the PRSP (2005-2007):

Poverty is widespread and deep...70 percent live in poverty. There is wide disparity in poverty's geographical distribution: although about 66 percent of the 4,8 million population live in rural areas, 75 percent of the poor are rural. In the poorest districts more than eight out of ten people live in poverty.²⁷

Several sources confirm that widespread poverty has combined with endemic corruption to produce an atmosphere of despair, discontent and increasing criminality. The April 2006 Report of the UN Secretary General is rather candid in its observation and concern that:

There has been no improvement in water and power supplies since the war ended. The cost of basic amenities, including the staple food, rice, is beyond the reach of most households. There is a general perception that the Government's inability to deliver basic services or respond to the needs of the population is due to corruption and mismanagement of public resources, and this has become a source of tension.²⁸

The youth question

It is difficult to overemphasise the extent of youth unemployment and discontent in Sierra Leone, the implications of the youth for post-conflict reconstruction generally, and consolidation and sustainment of the gains of SSR in particular. Indeed the youth question, if not tackled systematically and vigorously, has the potential to unravel the painstaking achievements so far recorded. As cautioned in the UN Secretary General's Report:

Currently, the most immediate threat to stability in Sierra Leone is the worsening youth unemployment situation. As a result of the continuing dire economic situation in the country, there has been an increasing number of violent student and labour protests, as well as an upsurge in criminality throughout the country.²⁹

There is a general perception that the state is doing much less than it should and than it could, and that corruption and parochial party political interests - particularly regarding the forthcoming 2007 elections - are responsible for the lack of action.³⁰ An unemployed and disenchanted youth population constitutes a pool of potential recruits for the political elite and disgruntled elements within and outside Sierra Leone, and increased criminal activity.

The pitfalls of restructuring

While public perception of the police and other security institutions has improved somewhat, there is still a significant level of public distrust and pessimism. There continues to be a shortage of accommodation, vehicles and communication equipment. Salaries are irregular and low, accounting for the rampant corruption within the service. Indeed, morale is so low within the SLP that key personnel have abandoned their positions, especially when sent abroad for training.³¹

In addition, mechanisms for addressing public complaints remain far from being adequate. Police continue to be involved in crime and in using their uniforms for personal gain. From extortion from petty traders to more serious crimes such as murder, police officers continue to be implicated and as a result suffer a crisis of confidence among the population.³² Reflecting this seeming despondency, the IGP is reported to have announced that community policing has failed.³³

On the other hand, and perhaps more disturbingly as a result of the history of the armed forces, the RSLAF continues to suffer from its own restructuring constraints. Low salaries, untenable living conditions for soldiers, and a lack of basic communication equipment have the potential to seriously undermine the capacity of the force to provide effective external security, as well as affect the morale of its members.³⁴

Essential to any viable SSR is the prevalence of the rule of law, which is in turn predicated on a functional and accessible judicial system. Both the UNDP and the UK (through its Justice Sector Development Programme) are active in supporting justice sector reform and in addressing serious capacity shortcomings of the judiciary, including issues of logistics, mobility, infrastructure and training. However, the judiciary remains prone to political interference and corruption. Traditional justice mechanisms are problematic, representing more of an impediment to justice and a tool of social alienation. In the assessment of UNIOSIL:

The traditional (chieftaincy-based system of justice operating in rural areas in parallel with the modern common law) system, and which handles an estimated 80 percent of legal disputes submitted for adjudication in these areas, is male-dominated, prone to unfairness and marked by a perceptible lack of transparency and accountability.³⁵

Governance deficits

As Gavin Cawthra and Robin Luckham have aptly noted:

State control or civilian control of military and security structures is not necessarily equivalent to democratic control. It is perfectly possible to have civilian control of the military that is non-democratic, anti-democratic or even militaristic.³⁶

The gap between civilian control and democratic control is becoming increasingly evident in the security sector in Sierra Leone. Perhaps the most significant deficiency in the reform of the security sector is the lack of emphasis on placing the security sector within a democratic governance framework, with adequate oversight mechanisms, and involving other actors beyond the executive arm of government. Some of the main governance concerns in the country's SSR process involve the following issues:

- a) Entrenched mindsets.
- b) Guarding the guardians.
- c) Privatisation of security and oversight.
- d) Ownership concerns.

These issues are further discussed in the following sections.

a. Entrenched mindsets

The deficiency in the governance aspects of security sector transformation is first identifiable in the mindset, reflecting entrenched old ways of thinking about security which is exclusionary and inherently undemocratic. This is applicable to virtually all levels of stakeholding, including Sierra Leoneans generally, the government, and security officials.

Following decades of being at the receiving end of the brutality and arbitrariness of ill-governed security officials, Sierra Leoneans are yet to come to grips with the reality of being the 'governors' of security, and of being the source of the sovereignty which the security services presumably aim to protect and uphold. Regardless of which specific SSR programmes are introduced, there could be no practical improvement until and unless there is a reversal in the trading of places in hierarchy which has afflicted civil-security relations over the years in Sierra Leone.

Correspondingly, while the government has introduced several measures to reform the security sector, emphasis appears to have been more on operational effectiveness than democratic governance mechanisms. Even though the declared goal of the SILSEP includes a focus on 'enshrining the principles of civil control, accountability and transparency', mechanisms and processes for operationalising accountability do not feature prominently. For example, even though the PRSP integrates SSR into poverty reduction strategies, an analysis of the provisions on 'strengthening national security' betrays an overwhelming emphasis on building the capacity of security institutions. Of the two pages devoted to SSR in the PSRP, the last sentence merely mentions that 'also the co-ordination and oversight mechanisms will be transformed to ensure effective civilian control of the forces for transparency, accountability and responsiveness of the forces'.³⁷ Gbla therefore has observed that 'while this document (PRSP) mentioned strengthening national

security institutions as an element of its reform process, it did not refer to SSR explicitly or to the strengthening of democratic and accountable security institutions'.³⁸ A related indication of the persistence of old mindsets is the manner in which PRSP refers to 'Fire Force' and 'Prisons Force', to describe what are constitutionally the National Fire Service and the Prisons Department respectively.³⁹ Describing these institutions as 'force(s)' rather than 'service(s)', and the latter as 'prisons' rather than 'correctional', are significant indicators of prevalent mindsets and operational habits and tendencies within the society at large.

An examination of the SSR Report also points to an implicit reduction of oversight to mean administrative monitoring by civilian bodies. Oversight is thus repeatedly discussed in the document mostly in relation to the roles of the ONS, the Ministry of Internal Affairs, and the National Security Council Co-ordinating Group. Such 'oversight' is essentially at the level of the executive - an inner cabinet framework in the absence of individual security service councils - with negligible roles for the legislature, judiciary, and an engaged civil society. While the judiciary remains largely incapacitated but witnessing a gradual revamp, the legislature demonstrates an urgent need for a change in mindset in order to conceptualise parliamentary work as a service to the nation rather than employment for which every activity attracts financial reward. In addition to such sensitisation, research and staff support capacity of the relevant committees for security sector oversight are in dire need of enhancement. The role of a vibrant and informed civil-society in the governance of security in Sierra Leone is at best rudimentary, while a critical press is still in its infancy and often tainted by corruption and partisan bias.

b. Taming and guarding the guardians

In a sense, the dilemma of oversight is often the need to oversee the overseer, in order to ensure that oversight mechanisms and processes do not function to serve parochial political interests and agendas.

Ironically, following largely from its effective performance in the security sector review and the external support which it has received, the Office of National Security has witnessed a rise in prominence, profile and power within the Sierra Leonean security architecture. While its role is both relevant and strategic, there is a consistent need for vigilance in order to ensure that the ONS does not itself evolve into a security Frankenstein-monster. Thus, while its performance so far has been nothing short of exemplary, it needs to be subject to effective oversight, beyond the executive. The SSR Report's

recommendation that 'civilian monitoring and oversight must be strengthened to ensure adequate transparency, accountability and responsiveness of the security forces' (page xv) appears to assume that oversight is limited to the security forces only. It needs therefore to be emphasised that the ONS is itself an object of effective oversight.

For example, the role of the ONS 'to provide (intelligence) assessments on a need-to-know basis for the attention and timely action of ministries and departments' (page xii of SSR Report) is a sensitive one, and there is an omnipresent concern as to the determination of the 'need-to-know', by who, when, and how. It is therefore essential to ensure democratic control which includes a broader spectrum of oversight actors such as parliament, civil society, a critical press, and a respected functional judiciary. This is also particularly relevant in view of the emergence of a post-conflict intelligence sub-sector and the unsavoury role of intelligence services in Sierra Leone's chequered history.

c. Privatisation of security and oversight

As many African states, particularly those recovering from protracted conflict, struggle with the primary task of delivering security to the general population, the market for commercialised security services has been witnessing a seemingly silent boom in Sierra as a result of the war.

However, as with most other post-conflict restructuring exercises, SSR in Sierra Leone has focussed essentially on statutory forces. While President Kabbah's claim that 'security is now really a public service' may be inspiring to many, not much attention has been given to the parallel growth of the private security industry. Given the continuing lack of confidence in public security institutions, commercial security actors have witnessed a sharp rise in patronage. According to a recent study of the private security sector in Sierra Leone, the growth has been meteoric:

Most businesses and affluent residences seek protection by private security firms which, to date, are largely unregulated and provide services of varying quality. Before the war, there were two private security companies in Sierra Leone. Since then, the sector has expanded considerably. The ONS reports that there are approximately 30 companies in the country, although the actual number may be higher.⁴⁰

The two locally-registered security companies in Sierra Leone before the war were Mount Everest Security Agency, and Dynamic Security, established in 1984 and 1985 respectively.⁴¹ The first security company in Sierra Leone had external origins in 1936, when the Sierra Leone Selection Trust, a De Beers subsidiary, was allowed to field a private 'security force' of 35 men to protect its diamond concession in the Kono area. The currently estimated 30 local security firms employ some 5 000 personnel.⁴²

Such an explosive growth in the private security sector presents veritable oversight and governance challenges which are neither evident in the SSR Report, nor a prominent feature of current government security policy postures. It may also represent the withdrawal of the state from a crucial service sector as security which, ostensibly, can only be procured by the rich and powerful, leaving ordinary citizens with hardly any public safety and security whatsoever.

d. Ownership concerns

Ownership forms the basis of accountability and sustainability. Most security sector reform interventions therefore proclaim the promotion of local ownership as a core element of the reform programme. While the reform process in Sierra Leone displays exemplary local ownership as argued above, significant areas of concern remain.

While local actors have been prominent in the review and reform of the security sector, questions remain as to whom really drives the agenda. For example, on the question of the staff strength of the RSLAF, the Report of the broadly consultative Security Sector Review had clearly stated that 'in the medium to long term, the Working Group suggests the total estimated strength of the RSLAF that can be afforded and is necessary to be in the region of 10 500 personnel' (page xiii). This number was achieved at the end of 2004.⁴³ There are, however, indications that the donor community may be putting pressure on the government to accept smaller staff strength. As the report of the UNSG noted 'the International Military Advisory and Training Team has proposed, however, a further reduction in strength to 8 500, which is currently under discussion by the Government'.⁴⁴ Given Sierra Leone's dire economic situation, its security sector reform programme is highly externally dependent, with an ever-increasing possibility and temptation for 'he who pays the piper to dictate the tune.'

In addition, the declining role of the DISECs and PROSECs, which form the core of Sierra Leone's new early warning mechanism, further demonstrates the risks of overdependence on external support. Since the departure of UNAMSIL, these bodies have suffered a sharp deterioration in their operations due to lack of communications equipment to report to ONS.⁴⁵

Transitional justice

Post-conflict reconstruction and transformation in Sierra Leone in general, and security sector reform in particular, are clouded by a sense of unease and lack of consensus regarding transitional justice. Of significance was the indictment of the former leader of the CDF, Sam Hinga Norman, who fought against the RUF/AFRC, and was later appointed Deputy Minister of Defence, and then Minister of Interior, until his arrest by the Special Court for Sierra Leone (SCSL).⁴⁶ It is widely acknowledged that the CDF played a crucial role in defeating the rebels and in the restoration of Kabbah to power. As *Africa Confidential* has aptly noted, Sam Hinga Norman is 'regarded as a national hero for mobilising traditional hunting societies to push back the rebels'.⁴⁷ Opinions are therefore divided on the issue of Norman's indictment. The debate is between those who believe that it was immoral for Norman to be indicted while, arguably, the most direct beneficiary of his action continues in his position as President. An opposing school posits that Norman, as leader of the CDF, should be held accountable for the group's actions, irrespective of who may have benefited from such acts, as long as such parties cannot be proved to have been directly responsible. According to Norman, however, Kabbah himself was the 'key leader' of the CDF, and was even responsible for providing the name.⁴⁸ It is evident that the focus and insistence of the international community to use the Sierra Leonean case to demonstrate the futility of impunity, and thus discourage potential transgressions of international humanitarian law as well as human rights law, is clouded and complicated by the political context of the Sierra Leonean civil war.

It is a debate which does nothing to contribute to national cohesion in Sierra Leone, and remains one of the main obstacles to the emergence of a clear sense of national cohesion, which is an essential condition for an effective and accountable security sector. Norman's detention and trial raised disturbing questions about the impact on the CDF elements, some of whom have now been integrated into the new army.

V. Conclusion

The reform of the security sector following a decade of war in Sierra Leone has had a positive impact on the security situation and contributed immensely to the restoration of essential public safety and enhanced levels of operational efficiency. Even though operational gaps remain as identified and detailed above, the more significant deficits, from a governance perspective, reside in the marginal role of democratic oversight and control mechanisms in the security sector reform process thus far. Given the role of bad governance of the security sector in Sierra Leone's protracted conflict, there is an urgent imperative to focus on the governance aspects of SSR. Such a policy direction would represent a veritable preventive peace building measure, and for consolidating the gains of post-conflict reconstruction. In the final analysis, however, the security institutions are a mirror of society, and SSR can, to a large extent, only be as successful as the broader post-conflict reconstruction framework. Thus, the political economy underpinning reform, including and particularly the role of the youth which forms the majority of the population, must be considered as being pivotal to the success of not only SSR, but the entire post-conflict reconstruction agenda.

Even though the paper has focused on the SSR process in Sierra Leone, the issues discussed may apply to some of Africa's post-Cold War conflicts and complex emergencies, such as those in the Great Lakes Region and the Horn of Africa. Nearer to home, the issues may also apply to the Mano River conflicts involving Liberia at the beginning of the 1990s, as well as the latest conflict in Cote d'Ivoire since 1999/2000.

In this context, its lessons and broad recommendations may very well serve as a guide for SSR in the countries emerging from conflict in these troubled regions of Africa. Based on this, the paper makes the following policy recommendations:

- **Parliamentary capacity:** In addition to the general development of the parliament, specific programmes should be introduced for security sector oversight. Including training for parliamentarians and experience-sharing activities with other national and regional parliaments.
- **Private security companies:** As the market for private security services increasingly booms, government should consider setting up more rigorous oversight frameworks for the regulation of local private security

firms. Policy and operational guidelines for local private security companies need to be further developed.

- **Sustain a clear sense of direction towards democratic governance of the security sector:** In order to address entrenched exclusionary and undemocratic mindsets in security institutions, particularly in the security sector, a clear security policy direction should continue to be provided at the highest levels of government. Presidential and ministerial speeches and statements should emphasise the benefits and gains of an effective and democratically governed security sector for a country in post-conflict transformation.
- **Adopt and emphasise security policies which contribute to youth employment and education.**

Notes

- 1 The security sector refers to those institutions entrusted with the protection of the state and its citizens (such as the military, intelligence, and paramilitary agencies), civil authorities mandated to manage and control these agencies (such as ministries of defence, finance, and interior, parliament, and civil-society organisations), and justice and law enforcement institutions (such as judiciary, justice ministry, police and penal services, human rights commissions and ombudsmen, customary and traditional justice systems). Increasingly, non-state security actors, such as armed groups and private military and security companies are being acknowledged as forming part of the security sector.
- 2 See also Ebo, A. The Role of Security Sector Reform in Sustainable Development: Donor Policy Trends and Challenges. CSCG Working Paper, King's College London. Rupiya, M.R. Civil-Military Relations in Zimbabwe [online] Available at <http://www.issafrica.org/pubs/Books/OurselfsToKnow/Rupiya.pdf>.
- 3 See for example Adebajo, A 2002. Building Peace in West Africa: Liberia, Sierra Leone and Guinea-Bissau. International Peace Academy Occasional Paper Series.p.16; Malan, M. Security and Military Reform. In Malan, M., Meek, S., Thusi, T., Ginifer, J. and Coker, P. (eds). Sierra Leone, Building the road to Recovery. ISS Monograph 80 (2003). See <http://www.iss.co.za/Pubs/Monographs/No80/Chap5.html>.
- 4 UNIOSIL is the first integrated UN office established to support the peace-consolidation process after the completion of a peacekeeping operation. The Sierra Leone SSR process is of added significance given the decision of the UN Peacebuilding Commission to focus on Sierra Leone and Burundi.

- 5 While 'security sector reform' has been the generally-accepted term used to describe conscious efforts to alter the conceptualisation and delivery of security in a manner consistent with democratic norms and sound principles of governance, it has been pointed out that in post-conflict situations, incremental changes (reforms) are not sufficient to address the distortions and inadequacies resulting from years of conflict. Rather, what is required is a fundamental shift in institutional and political relations which transcend the incremental changes implied by mere reform. Reference is therefore made to security sector transformation in cases of post-conflict reconstruction, rather than reform. See, for example, Ball, N and Fayemi, K (eds) 2004. *Security Sector Governance in Africa: A Handbook*. It is also notable that in the conceptual evolution of the SSR concept, the term 'system' has also emerged to refer to what is essentially the same phenomenon. Particularly in discussions and documents emanating from the OECD, reference is made to security system reform.
- 6 Fayemi, J.K. *Governing Insecurity in Post-Conflict States: the Case of Sierra Leone and Liberia*. In Bryden, A. and Hänggi, H. (eds) 2004. *Reform and Reconstruction of the Security Sector*. Geneva Centre for the Democratic Control of Armed Forces. Lit Verlag Münster: Münster.
- 7 Presidential Foreword to the Sierra Leone Security Sector Review Report, 2005. Security Sector Review Secretariat, Office of National Security, State House, Freetown, March 2005. p. x.
- 8 Statement by His Excellency, Dr Ahmed Tejan Kabbah at the Official Launching of Three Key Security Sector Reform Documents for Sierra Leone, 26 May, 2005. See <http://www.statehouse-sl.org/speeches/3-key-sec-may26-05.html>. Accessed on 29 May 2006, 16.55GMT.
- 9 Government of Sierra Leone, *Poverty Reduction Strategy Paper: A National Programme for Food, Job Creation and Good Governance 2005-2007*, March 2005. Online available at <http://www.inf.org/external/pubs/ft/scr/2005/cr05191.pdf>. p. 118.
- 10 Sierra Leone Security Sector Review Report, 2005. Security Sector Review Secretariat, Office of National Security, State House, Freetown, March 2005. p.21. Law here refers to the 1991 Constitution, the Anti-Corruption Act, 2000; and the National Security and Central Intelligence Act, 2002.
- 11 Miners, N J 1971. *The Nigerian Army, 1956-1966*. Methuen.
- 12 Sierra Leone Encyclopaedia 2006, SLP. Online available at http://www.daco-sl.org/encyclopedia/1_gov/1_6slp.htm.
- 13 Foreign and Commonwealth Office, *Countries and Regions, Africa: Sierra Leone: Security Sector*. Online available at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1063633918151>.

- 14 Draft Sierra Leone Security Sector Reform Programme (SILSEP) Security Sector Advice- Sierra Leone Police Terms of Reference.' Online available at <http://www.dfid.gov.uk/procurement/ojec7093-tors.pdf>.
- 15 First Report of the Secretary-General on the UNIOSIL, (S/2006/269) 28 April, 2006. p. 4.
- 16 Aboagye, Festus B. (Lieutenant Colonel) 1999, *The Ghana Army, a Concise Contemporary Guide to its Centennial Regimental History 1897-1999*, Accra: Sedco, p. 41. The force was originally formed as the West-African Frontier Force (WAFF) in 1897 from a nucleus of the Royal Nigerian Constabulary, until January 1901 when other colonial forces were amalgamated into it.
- 17 Online available at http://www.army.mod.uk/deployments/sierra_leone/mission.htm.
- 18 Gbla, O 2006, Bryden, A, N'Diaye, B and Olonisakin, F 2006. *Democratizing Security Sector Governance in West Africa: Trends and Challenges*. Conflict, Security and Development 5:2, August 2005, Kings College London. p. 220, Fitz-Gerald, A M 2004. *Security Sector Reform in Sierra Leone*. GFN-SSR, Shrivenham.
- 19 The JIC consists of senior representatives of all security agencies and seeks to enhance inter-agency co-operation in intelligence gathering and processes. The Joint Assessment Team (a department of the ONS) collates and assesses intelligence on each subject of national security and drafts the assessments considered by the JIC. See SSR Report, 2005. p. 31.
- 20 Statement by President Kabbah, op cit.
- 21 For a detailed list of members of the Working Group and participants at the Consultative Workshops, see respectively Annexes D and E of the Security Sector Review Report, op cit.
- 22 Pillar 1 of the Sierra Leone PRSP (2005-2007) is Good Governance, Peace and Security. Pillar 2 is Pro-Poor Sustainable Growth, while Pillar 3 is Human Development.
- 23 Statement by President Kabbah, op cit.
- 24 SILSEP SLP draft Terms of Reference, op cit. p. 2.
- 25 Gbla, O March 2006. *Security Sector Reform under International Tutelage in Sierra Leone*. *International Peacekeeping*, 13 (1): 78-93.
- 26 United Nations Integrated Office for Sierra Leone (UNIOSIL). *Harnessing Hope: Catalyzing Efforts for Accountability, Participation, and Reconciliation in Sierra Leone*. Draft Paper (14 February 2006). p. 8.
- 27 Government of Sierra Leone, *Poverty Reduction Strategy Paper (PRSP)*, (February 2005), p. xxvi.

- 28 First report of the UN Secretary General on UNIOSIL (S/2006)269, 28 April 2006) p. 3, See also the draft UNIOSIL Peace Consolidation Strategy (July 2006).
- 29 UNSG Report on UNIOSIL (S/2006)269, April 2006), p. 3.
- 30 Although addressed by Article XXX of the 1999 Lomé Agreement, the issue of former youth- and child soldiers is not sufficiently taken care of. There are only estimates of the number fighters and child soldiers during the war and in DDR. Some 72 000 ex-combatants had been disarmed by 2002 (US DoS: <http://www.state.gov/r/pa/ei/bgn/5475.htm>). Screenings showed that up to 60 percent of combatants were children (Fofana, L. July 1997. Sierra Leone Children: Young, armed and dangerous, IPS. And ca. 7 000 ex-child soldiers were included in the reintegration programme in Sierra Leone and Côte d'Ivoire. (http://www.child-soldiers.org/document_get.php?id=795). Government and RUF are estimated to have employed 5 400 child-soldiers (Ministry of Foreign Affairs of Japan: <http://www.mofa.go.jp/policy/human/child/survey/profile2.htm>). These numbers are by no means definite, but give an impression of the inadequate handling and reintegration of former child and youth soldiers. Programmes for DDR for child and youth combatants were, strongly endorsed by the international community, undertaken. Government and UN-agencies as well as NGOs were actively taking part in that process.
- 31 Kamara, S 26 May 2006. 'Five Senior Police Officers abandon Force', Standard Times, Freetown, . Online available at www.standardtimespress.net, [accessed 27 May 2006]. Among the officers concerned is the Director of Community Relations at Police HQ.
- 32 Kamara, S 20 May 2006. 'Police Extort from Petty Traders, Standard Times. See also Issa, M 24 May 2006. 'Suspected Murderers of bike rider charged: police officer Implicated', Standard Times, 24 may, 2006. Both reports are available online at www.standardtimespress.net.
- 33 According to UNIOSIL Press Clips of 26 May 2006, 'For the first time, the Inspector General of Police, Brima Acha Kamara, has admitted that community policing has failed, vide reports by the Standard Times. The paper mentions that the comments were made in view of the appalling security situation in the country.
- 34 Draft Peace Consolidation Strategy Paper, p. 6.
- 35 Draft UNIOSIL Peace Consolidation Strategy, p. 5.
- 36 Cawthra, G and Luckham, R 2003. Democratic Control and the Security Sector: The Scope for transformation and Its Limits, in Cawthra, G and Luckham, R (eds) 2003. Governing Insecurity: Democratic Control of Military and Security Establishments in Transitional Democracies. London and New York: Zed Books, p. 305.

- 37 PRSP, p. 119.
- 38 Gbla, O 2006, op cit, p. 82.
- 39 PRSP, p. 119.
- 40 Abraham, R and Williams, M C. The Globalization of Security. Country report: Sierra Leone, pp. 5-7.
- 41 Abraham and Williams, op cit, p. 7.
- 42 Office of National Security, Freetown. It is pertinent to note that the more prominent ones include Dynamic Security, Mount Everest, Group4Falk/Securior Gray (listed on the London Stock Exchange, a local subsidiary of a Dutch chain), Hughes Security, Southern Cross, Pentagon, and Sierra Rutile (in-house security).
- 43 This compares with the figure of 14 700 before the war.
- 44 UNSG Report, op cit, p. 5.
- 45 UNSG Report, op cit, p. 5.
- 46 The CDF was the coalition of all pro-government militia groups set up by the exiled Kabbah administration in Guinea.
- 47 Sierra Leone: Courting Disaster 14 April 2006, Africa Confidential, 47 (8): 2.
- 48 Gberie, L March 2006. Sierra Leone: Long Road to Justice. Africa Week, London, p. 24.

CHAPTER 5

DEVELOPMENTAL PEACE MISSIONS: SYNERGISING PEACEKEEPING AND PEACE BUILDING IN TRANSITION PERIODS

Richard Gueli and Sybert Liebenberg

I. Introduction

Over the years, the functional gap between peacekeeping and peace building (or 'post-conflict' reconstruction) has received a lot of attention because it remains a weakness in the policy framework of the United Nations (UN) conflict resolution repertoire, particularly in peace missions. This view is underscored by the UN's own concern with not being able to effectively bridge the security-development gap in transitional periods, as was clearly revealed when the Under-Secretary-General for Peacekeeping, Jean-Marie Guéhenno, once remarked:

[UN] mission planning remains far from perfect [and] as a result, we have peacekeeping operations that succeed, only to lapse back into conflict. Successful operations, as it were, in which the patient dies.¹

Guéhenno's comments are especially true in Africa, currently the region with the highest concentration of large costly multi-dimensional peace missions. Across the Continent, ceasefires and peace agreements are fragile; and while UN peacekeeping frequently fails to effectively disarm and demobilise combatants, peace building efforts struggle to reintegrate former ones leading to societies in transition often relapsing into violent conflict in the face of chronic unemployment, poverty, famine and disease.² Evidently, there is a need for an alternative approach to respond to contemporary armed conflict and to assist countries recovering from war.

One important approach was highlighted by the former UN Secretary-General Kofi Annan in 1998, and later reiterated in his report titled, *In Larger Freedom* (2005), in which he noted that peacekeeping and peace building should be designed as simultaneous activities, used in combination and as complements to one another in the field.³ However, in spite of strategic level implementation of the recommendations of the Brahimi Panel, including the 'Integrated Missions' concept and approach, UN attempts to bring security

closer to development have largely left the traditional boundaries between peacekeeping and peace building still distinct to this day. For instance, the two activities are not integrated within the UN bureaucracy, but have separate institutional homes, the Department of Peacekeeping Operations (DPKO) and the recently inaugurated Peacebuilding Commission.

But why is it necessary to bridge the divide between security and development in peace missions? More importantly, is this idea welcome or even practical? While the debate over the proper roles of, and relationship between, military peacekeepers and civilian humanitarian and developmental actors is relatively young and not thoroughly researched, one thing is certain: the causes of contemporary conflicts are too complex to be addressed by security interventions alone. This is especially true if one considers two enduring lessons that the UN has learned through years of experience in responding to conflict. Firstly, successful peace missions require integrated efforts at the strategic and operational levels, and not separate tracks that do not converge. Secondly, speed and momentum do matter in peace mission interventions.

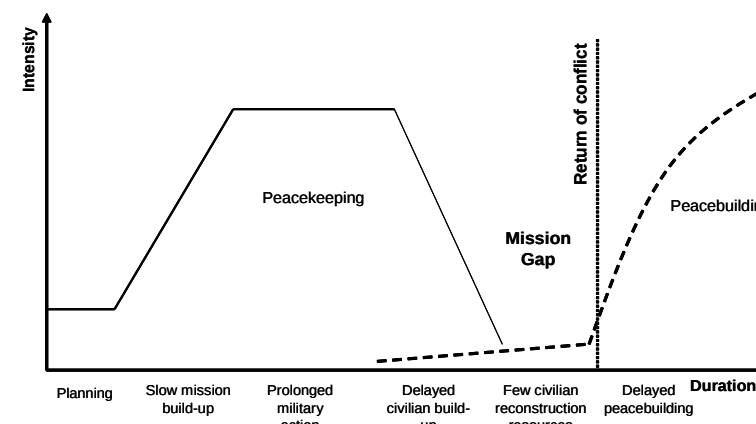
Today, the UN system is re-structuring to deal with these and other important peacekeeping lessons. The recent establishment of the Peacebuilding Commission - intended to fill the institutional gap between military peacekeeping and development activities, and to strengthen UN capacity for peace building - is a case in point. Although noteworthy, UN reform is regrettably guided by a time-honoured, but questionable, concept of peace operations, namely that security is a precursor to the reconstruction and development dimensions of peace building.

The concept of 'Developmental Peace Missions' aims to challenge the traditional view that short-term military security is a necessary pre-condition for long-term development. To the contrary, it proposes that military operations can prove counterproductive if continued too long, and not complemented with real economic growth and social upliftment. This article offers a first cut at substantiating this claim by exploring how initial civilian reconstruction efforts can enhance military peacekeeping, and, at the same time, create the momentum needed for successful transitions.

II. Conceptual Argument

A fundamental assumption of modern peace missions is that military security is a priority, based on the pervasive notion that reconstruction and development can only start once fighting between warring parties has stopped. Consequently, when a crisis emerges, decision-makers tend to spend more time planning for military operations rather than planning for long-term development. Because of this, peace missions are designed to mobilise and deploy military peacekeepers first to control violence. As a rule, this effort usually entails trying to separate warring factions and assisting with their withdrawal from a demarcated ceasefire zone. This approach is informed by the assumption that the separation of warring factions by military peacekeepers will create a safe environment for disarmament and demobilisation and for wider peace building activities. The peacekeeping and peace building timeline gap is depicted in Figure 2.

Figure 2: The peacekeeping and peacebuilding gap⁴



However, while this may very well be the case, the preoccupation with establishing the military security of a post-conflict state often results in a more dominant role by military forces in peace missions; invariably, such military deployments are amply resourced, while critical peace building initiatives take the back seat because of insufficient funding. But even though military peacekeeping may work well when sufficient numbers of heavily-armed soldiers impose peace on the ground, local support for 'blue helmet'

troops and transitional administrations dangerously declines as expectations of improved standards of living are not sufficiently met. The overall result of peacekeeping - particularly in Africa - is that conflicts keep smouldering below a deceptive surface of peacemaking and peacekeeping, while post-conflict countries fail to move from war to lasting peace.

In consideration of these factors, we contend that peacekeeping operations often fail to provide the necessary security for the foundations on which development can proceed because they are not designed to provide a fundamental element of security and stability, namely baseline infrastructure - water, transport, energy, and telecommunications - that is vital for the functioning of a state and for society.

The importance of socio-economic infrastructure to modern society is fairly obvious: it provides the basis for human capital, the provision of state goods and services, and enables the creation and functioning of public and private institutions.⁵ In Africa, direct war damage and the neglect of infrastructure maintenance during war has left several governments with deteriorated, sometimes non-existent, capacity to provide essential services to populations. The failure or inability of state institutions to deliver public services can be a crucial cause of conflict and instability, in so far as ordinary citizens may engage in alternative forms of wealth creation, usually violence and crime, to escape poverty.

The point is, unwinding armed conflict and the elaborate networks behind it means not only going after those involved (difficult enough as this is anyway), but also lifting people out of poverty and promoting more sustainable livelihoods. Yet, the idea of putting in place critical infrastructure into what has traditionally been seen as 'military peacekeeping space' raises significant issues in terms of the way UN decision-makers have normally conceptualised, planned and implemented peacekeeping missions. On a conceptual level - and this point was first recognised by Kaldor⁶ and later by Brahimi - it requires understanding the importance of utilising development as both a 'pre-war' and 'post-war' strategy, aiming at both the prevention and cure of the underlying causes of conflict. On a planning level - yet to materialise - it means integrating infrastructure development planning from early on with peacekeeping planning.⁷ On an operational level - no doubt a contentious point - it means changing the way peacekeeping operations are staffed to support, *inter alia*, the deployment of civilians alongside soldiers in order to jumpstart essential reconstruction efforts. The establishment of

this sort of civilian capacity is important because it may serve to shorten the duration of fragile transition periods.

Increased civil-military co-operation does not necessarily mean increased military engagement in humanitarian and developmental aid; there is always the danger of the military 'politicising' such activities. Rather, it emphasises, firstly, the need to reconcile military and civilian planning procedures before operations begin. Secondly, it accentuates the importance of drawing on the relative capabilities of both the military and civilians and recognising the complementary benefits of using both from the outset.

True, sustained efforts to promote infrastructure development will be difficult in areas where armed attacks are frequent. The experiences in countries, such as Liberia and Sierra Leone, where warlords and militia have controlled most of the country, and where the international community has been unwilling or unable to send a strong force, particularly during the 1990s, suggest that the idea of placing the lives of international personnel in extremely dangerous environments is simply unrealistic. However, it is also true that an over-protective view of civilian personnel in peace missions is bound to contribute to the widening of the gap between security and developmental efforts, and possibly place the whole mission in jeopardy. For that reason, planners should ensure the rapid concurrent build-up of civilian and military assets in peace missions, and that the initial mission mix should contain a fair amount of capability to kick-start reconstruction and development.

III. UN Complex Peace Operations: Progress and Problems

The term 'complex peace operation', sometimes referred to as 'multi-dimensional peacekeeping', is an expression that is often used by UN officials to denote the inclusion of post-conflict peace building activities into peacekeeping mandates that are authorised by the UN Security Council (UNSC). At the policy level, the UN uses a number of instruments to respond to conflicts. Four of these instruments are conflict prevention, peacemaking, peacekeeping and peace building.⁸

Significantly, the UN's shift from traditional border-monitoring peacekeeping to more complex and multi-dimensional operations in the post-Cold War world has entailed a gradual division of labour between UN soldiers and civilian personnel contracted by the DPKO. In the past, civilians mostly undertook mission support roles for the military, including finance, personnel,

administration and logistics. Today, civilian roles have grown to include units that specialise in political affairs, legal advice, civil affairs, human rights, humanitarian affairs, gender, child protection, electoral, disarmament and demobilisation, and public information. It is important to mention, however, that these units typically serve as focal points for co-ordination and liaison between DPKO and the myriad of international and local civilian agencies that are integrated with or work alongside the peace operation.⁹ In other words, they have no real implementation capability.

The UN's recent inclusion of 'Quick-Impact-Projects' (QIPs) in the budgets of most new peace operations, such as those in Liberia (UNMIL) and Côte d'Ivoire (UNOCI), represents another good example of how UN thinking about peacekeeping has evolved beyond the traditional model of military operations. QIPs are short-term, small-scale infrastructure projects, including but not limited to rebuilding strategic roads and bridges or restoring electricity and water supply in critical areas, and are aimed at making early improvements in a local population's quality of life.¹⁰ QIPs are usually identified and implemented by the military component of complex peace operations. Because of this, it has been suggested that QIPs are actually conducted for the sake of publicity and political gain ('heart and minds'), and for ensuring the success of military operations.¹¹

Thus, even at their outer limits, complex peace operations are not, as it were, 'integrated peacekeeping-peace building' missions. If anything, they have been predominantly military in nature, and remain founded on the same (traditional peacekeeping) premise of trying to separate warring factions through military interposition. By separating warring factions, the UN assumes that the presence of 'impartial' military troops will create an enabling environment for political tasks, the implementation of peace agreements, and disarmament and demobilisation, as well as for UN and non-UN agencies to undertake emergency 'post-conflict' humanitarian assistance, and peace building and reconstruction.

While numerous examples exist that suggest that peacekeeping mandates are usually 'completed', there is unfortunately little evidence to suggest that the actual accomplishment of peacekeeping mandates necessarily translates into predictable and sustained financing, as well as concrete international attention to local peace building activities. Even in cases where the peacekeeping phase of UN engagement has been hailed to end civil wars and establish enough stability for peace building to begin, as is often claimed, for example, in respect of Sierra Leone, considerable weaknesses remain in

local government capacity to deliver social services to local populations.¹² To the contrary, Hazen for instance points out that in Sierra Leone, 'many of the challenges noted in the December 2005 Secretary-General's report on [the UN mission in Sierra Leone] are the same challenges noted in the June 2002 report'.¹³ This suggests that the peacekeeping mission made little progress in stabilising the state's shaky foundations. Needless to say, a study of the UN mandate of the UN mission in Sierra Leone reveals that it did not explicitly include peace building tasks.

Broadly speaking, the recurring scenario of host-governments lacking basic systems and equipment to deliver basic services to society is commonly acknowledged as being symptomatic of the economic malaise of countries in conflict.¹⁴ In reaction to this, some analysts have become increasingly concerned with the idea of strengthening the level of civilian capacity deployed during and after peacekeeping operations.¹⁵ Actually, throughout the 1990s there were repeated calls within the UN system for contributing states to create specialised units of 'white helmets',¹⁶ composed of civilian experts equipped to take on the rebuilding tasks of peace building, leaving military security challenges firmly in the domain of blue helmets.

Despite the increased quantitative and qualitative demand for civilians in multi-dimensional and multi-disciplinary missions, few UN-contributing countries have paid sufficient attention to the need to systematically enhance their capacities for peace building. Not surprisingly, civilian experts - especially in reconstruction - are in short supply in peace missions. In this regard, Guéhenno underscores the underlying problem: the armed forces usually play a more dominant role in UN operations because they are so much easier to deploy - that is, unlike civil servants, they work under a common strategic framework, operate under a permanent budget, and have systems in place that allow for rapid deployment.¹⁷

The reasons for the lack of investment in developing robust peace building capabilities at country-level are not hard to find. The more obvious of these, perhaps, is that protecting the national interest has always been more important than responding to international humanitarian crisis. In other words: why bother developing or enhancing national capabilities for peace building when outside humanitarian concerns do not directly threaten the national interest? Also, in the likely event that such concerns do threaten national security, a basic operational principle underpinning peacekeeping has been to achieve military stability, and then worry later about reconstruction. In other words: if security is a pre-requisite for development, why should

state institutions concern themselves with providing humanitarian and developmental assistance when donor agencies and the international community can probably do a better job?

The net effects of these and other issues can be summarised as follows: firstly, reconstruction and development activities have not been regarded as a core function of the UN System and contributing countries; secondly, most of these countries have lacked any specific co-ordinating entity to deal with the challenges posed by peace building; thirdly, the lack of integrated inter-departmental strategies has contributed to the clouding of priorities, the inefficient use of (limited) resources, and the reactive nature of responses; and lastly, in the event of an emerging crisis, civilians have not been organised, equipped, and trained to deploy in the same fashion as their military counterparts.

In truth, the above-mentioned issues are not likely to be addressed until the UN system and contributing states decide to enhance national capabilities for peace building. In the case of the United States of America (USA), the decision to establish in July 2004 the Office of the Coordinator for Reconstruction and Stabilisation (S/CRS) - a new government unit mandated to establish and manage a standing civilian capacity for reconstruction - was due to the debacle of post-war planning for Iraq, and the threat posed by failed states harbouring international terrorism groups.¹⁸ This approach is similar in the case of the United Kingdom's (UK) decision to create the Post-Conflict Reconstruction Unit (PCRU) in September 2004. In Africa, however, the 'usual suspects' contributing to the outbreak or renewal of war - pervasive corruption, bad governance, lack of the rule of law and respect for human rights - have heightened socio-economic inequalities, including unemployment and the decay of basic infrastructure. These factors have long been considered as being anathema to the Continent's development agenda and the achievement of the Millennium Development Goals. In spite of that, lofty policy commitments have yet to be translated into concrete tools to enable African actors to use peace building as a strategy to achieve peace, and not only as a strategy to be implemented after peace has been established.¹⁹

The concept of developmental peace missions seeks to redirect strict adherence to the bedrock strategies of peacekeeping, focusing on the traditional separation of warring parties and prioritising military security. In this regard, the concept, above all, proposes that in order to ensure successful transition in peace missions, the UN system and contributing

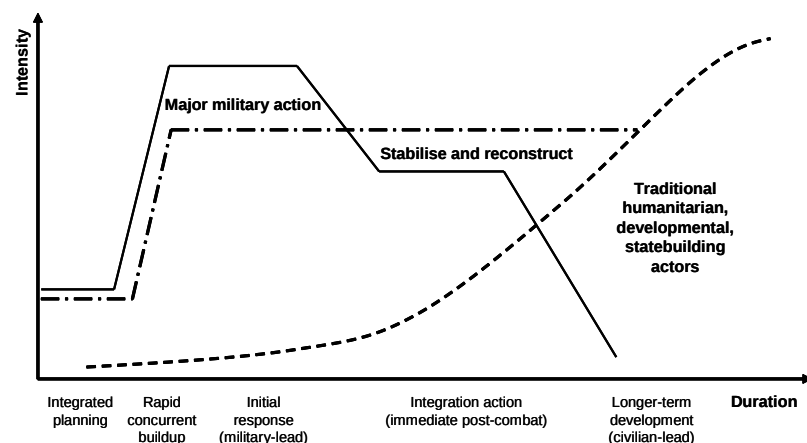
countries should consider mainstreaming critical civilian capabilities to augment the military security function and, at the same time, to properly address the unique challenges of long-term peace building.

IV. An Alternative Approach: Developmental Peace Missions

According to former Director of the UN Development Programme's Emergency Response Division, Omar Bakhet, UN efforts in 'East Timor, Kosovo and Sierra Leone all demonstrate the clear need to integrate development into peace operations from early on'.²⁰ Undoubtedly, many conflict prevention and resolution practitioners would agree with Bakhet's underlying argument that today's conflicts require multi-dimensional and multi-disciplinary approaches. In theory, this implies three important things: firstly, no single solution or response to armed conflict is, *per se*, more important than the other; secondly, there should be no fixed order of precedence in the actualisation of peace mission goals (that is to say, security is not necessarily a precursor for development); and thirdly, the use of the military instruments to stabilise security environments will be insufficient if applied independently from other essential peace mission tasks. These three basic principles - interrelatedness, simultaneity and complementarity - root the concept of developmental peace missions.²¹

This concept of developmental peace missions, originally termed 'developmental peacekeeping', was first introduced by former South African Deputy-Minister of Defence, Ms. Nozizwe Madlala-Roudledge.²² Madlala-Roudledge argued that military peacekeeping efforts should run concurrently with an equally vital aspect of an overall peace plan, which is the commitment to reconstruction and development, that is, to human security. She reasoned further, as had Annan previously in 1998, that an alternative approach to end violent conflict demands filling the institutional and programming void between peacekeeping and peace building, implying these two activities should be, firstly, bridged and then 'rolled-out' as mutually reinforcing processes. This new approach is portrayed in Figure 3.

Figure 3: Targeting the gap: Developmental Peace Missions



While the principle behind juxtaposing or merging peacekeeping with peace building is hardly new, there is still much to learn, institutionally and operationally, about how the two interventions can best be applied in practice. Arguably, the recent US-led coalition intervention in Iraq has been an important catalyst for increased strategic debate concerning enhanced military and civilian co-ordination. As one writer recently observed in an article in the *Wall Street Journal*: ‘early [military] decisions in Iraq [are] haunting current reconstruction efforts.’²³ The article seems to imply that the coalition should have spent more time planning winning the peace in Iraq rather than to simply win the war. Of course, Iraq was not a ‘genuine’ peace intervention. Nevertheless, few can deny that the conflict in Iraq has served to highlight to the wider international community the dangers of being unable to begin reconstruction promptly following major military action.

Key assumptions

The concept of developmental peace missions seeks to directly challenge the traditional and questionable dichotomy between providing short-term military security and long-term development in peace missions. The concept is based on the premise that security can only achieve permanent benefit if vital peace building activities are rolled-out within reasonable time after the start of the peacekeeping mission. By ‘reasonable’, it is understood to mean

providing critical reconstruction and development capabilities immediately after or ideally concurrently with the launch of military peacekeeping operations. This combined effort will entail increased collaborative planning and information sharing between the military and civilians (i.e. ‘integrated planning’). It would also entail deploying technical experts in infrastructure planning and finance alongside soldiers to fast-track the process of reconstruction in conflict-ridden communities (i.e. ‘integrated action’). Clearly, there are very practical problems if civilian personnel are expected to operate side-by-side with military forces at the onset of a mission, but these challenges can, and should, be overcome. If not, peacemaking efforts may help to successfully negotiate peace agreements, but will not necessarily create the (economic) incentives for locals to support peace processes over the long-haul.

A key task of planners to mitigate or reduce the scope for more conflict will be to decide on the length of the time interval between initial military response and full-scale developmental assistance. An interval too short might place the lives of international civilian personnel in excessive danger; one too long might well negate the benefits derivable from the initial military intervention. Experience has shown that the window of opportunity for reconstruction to start is very narrow: the first few months - if not weeks - following an intervention are perhaps the more critical period for laying the ‘groundwork’²⁴ for lasting peace and establishing the credibility of peace mission interventions. Conversely, legitimacy and political momentum lost during this critical period can be difficult to regain, especially if such interventions are unable to satisfactorily deal with systematic threats to human security of the civilian population in the conflict country.

Clearly, early integrated approaches of peacekeeping and peace building interventions will not guarantee success, but will make a considerable contribution to that end. Ultimately, the transfer of power, resources and capacities to local actors will define the effectiveness and sustainability of peace building on the ground. Therefore, it is vital that immediate relief and reconstruction efforts build - not replace - local capacities. Not only will such efforts create jobs and tap local expertise, but also provide local populations with concrete alternatives other than relying on violence and crime for sustenance. This point cannot be overstressed. Without sufficient local demand for peace and reform, efforts to re-build broken states will, in all likelihood, fail.

What needs to be done?

While the civilian reconstruction dimension of preventing a return to conflict is increasingly acknowledged by policy-makers and academics alike, the challenge remains to enhance the international community's capability to deal more effectively and professionally with destroyed states. This effort will require addressing a number of important issues. First and foremost on the list, as always, is the issue of funding. A recurring problem with peace building operations is that international donors often fail to deliver on their pledges to fund these operations. Although this is an issue that falls beyond the scope of this paper, it suffices to say that the UN's Peacebuilding Commission plans to serve as a central node for marshalling international resources for peace building in a sustained and concerted manner.

Secondly, the problem of independent planning and action in the field must be tackled. This is because the lack of co-ordination and complementarity between UN actors and departments has prevented otherwise sound reconstruction strategies from being converted into concrete, sustained achievements.²⁵ To this end, the UN has already undertaken significant steps towards improving internal co-ordination of military and civilian assets on the ground, in line with the recommendations made in the 'Integrated Missions' report.²⁶

Thirdly, the principle of better co-ordination within the UN bureaucracy is equally applicable to UN-contributing countries. Effective participation in UN or UN-led missions is largely contingent upon standing institutions and integrated means, and not *ad hoc* committees, plug-and-play forces and rosters of experts. What is required is an institutional base, backed by permanent military and civilian staff, that is endowed with sufficient authority to bring together all relevant national instruments when a crisis emerges. Such a standing entity - much like the US-based S/CRS and UK-based PCRU - should be created primarily to: facilitate co-ordination at the inter-departmental level; improve national capabilities for reconstruction through, *inter alia*, the establishment of a reserve or standing civilian reconstruction capability; provide detailed options and strategies for participating in peace missions; work closely with bilateral and multilateral institutions, such as the Peacebuilding Commission, as well as non-governmental organisations, civil society groups and the private sector, to anticipate and mitigate conflict, and respond quickly when necessary to promote peace.

Fourthly, the civilian component of peace missions must be bolstered to improve rapid response capabilities. Currently, the UN's Department of Peacekeeping Operations (DPKO) is exploring ways of improving in-house rapid deployment for mission start-up and reconstruction, *inter alia*, through the development of a roster of approximately 1 000-1 500 career officials that would provide DPKO with a pool of experienced personnel, able to deploy at short notice to fill core mission positions.²⁷ To support this drive, DPKO's roster initiative also includes attempts to draw civilian experts from UN-contributing countries to complement UN staff in the field. Unfortunately, this process has been marred by uncertain commitment and insufficient buy-in, not least because the majority of UN member states do not have any systems in place to systematically identify let alone deploy experts from within or outside government.

Indeed, it is uncertain - even with the recently created Peacebuilding Commission - whether UN plans to field a reliable civilian capacity for peace building will be realised as UN-contributing countries themselves lack appropriate stand-by or permanent arrangements. It is unfortunate to note in this regard that current plans to institutionalise the structures requisite for the proposed African Standby Force (ASF), do not explicitly foresee the need for a dedicated civilian reconstruction capacity. If fact, AU planners anticipate that this sort of capacity should be an *ad hoc* addition to the regional standby brigades.²⁸ Thus, without appropriate capacity available at the national or regional level, there is a danger that the new UN organ, the Peacebuilding Commission, will suffer the same fate as many other UN institutions, able to perform its analytical, policy-formulation functions, but barely able to fulfil its most important organisational, and monitoring functions.

Fifthly, the need for civilians to match military capability and deployment timelines should also be accompanied by the need to correctly sequence and synergise military and civilian tasks. On the ground, different agencies and institutions will invariably play different roles and take priority across the spectrum of conflict. Usually, the armed forces play a leading role in providing initial security; as security improves, civilian agencies move to the forefront of humanitarian, reconstruction, and development process. This way of sequencing will be a difficult assumption to change. For example, in post-elections DRC, international donors, although recognising that 'everything is urgent' in the country, have prioritised the task of creating an effective army, police and judiciary above that of helping the central government to start providing social services to its citizens.²⁹ Meanwhile, soldiers inside the 'brassage' or reintegration camps have been known to go on the rampage in

nearby villages for food and money because they do not receive regular pay. And while these camps seem to offer little but starvation and sometimes a wage, rebel groups in Congo's lawless east are offering the same men US\$60 dollars a month to carry on fighting.³⁰ This situation has resulted in continuing abuses against the general public and threatens to derail the country's future development and democratic project.

The point is that decision-makers must consider two interrelated dynamics when working out the sequencing of the peacekeeping and peace building interventions: firstly, safe and secure environments are necessary, but not a sufficient ingredient for enduring stability; and secondly, persistent conditions of insecurity prevent sustainable reconstruction and development. In other words - and this is true of the DRC - no amount of diplomatic mediation or military coercion will win the peace if people, especially the youth, have no alternative livelihood to that of the army or militia groups. Dealing with this issue will require the on-site presence of civilian teams that can fill the gap between military peacekeeping and traditional development assistance. Since most conventional donor organisations are unable to respond quickly beyond the provision of basic humanitarian relief in this critical stage, planners should consider synergising key reconstruction capabilities alongside the military security function. In this way, more tangible opportunities can be offered to soldiers and ordinary citizens that would prefer to stop fighting, and find more 'regular' jobs.

Lastly, to achieve rapid delivery of basic services in the period following major conflict, planning for infrastructure reconstruction (in some case, as in Southern Sudan, construction) must begin concurrently with planning for military operations. This process poses a great analytical and technical challenge for civil-military planners, not least because it will entail being able to plan within a framework that can clarify short, mid and long-term needs and objectives for stabilisation operations and reconstruction efforts. In more practical terms, integrated planning will require greater 'interoperability' between military and civilian staff to ensure that both groups work in full communication and mutual support of one another. Reconciling civilian and military planning procedures will be difficult: as Stephenson points out: 'civilian practitioners of foreign assistance often take the long view, based upon years of experience. By contrast, the military is mission-oriented and tends to [resolve] a problem with the objective of overcoming it as quickly as possible'.³¹ While both views are important, international civilian personnel should recognise that the long-term success of a peace intervention will partly depend on their ability to make rapid and demonstrable results in

order to win support and trust from local residents, even of this means operating in theatres where the mix between conflict and peace is likely to shift back and forth.

V. Conclusion

After the shooting stops in peace operations, the question still remains unanswered as to who will undertake the more critical function of peace building and post-conflict reconstruction. Usually, in the immediate aftermath of major conflict, local capacity is limited, conventional international assistance can take months to arrive, and societies that have suffered through years of conflict find themselves facing deprivation, isolation, and perennial danger.

Thus far, the main international body charged with responding to violent conflict, the UN, has generally struggled to provide host-nations with an improved situation. Although post-Cold War peace missions have moved beyond the traditional notions of peacekeeping to include some elements of peace building, the nature of peacekeeping has been predominantly military. As a result, the benefits derived from participation in violent armed conflicts often outweigh those for supporting unrewarding peace agreements; this is the reality for the unemployed youth.

This paper has attempted to suggest that, in order to ensure that local populations are offered concrete evidence of progress; civilian peace building should be more closely integrated with the military peacekeeping function, to assess and execute operations that aim to fill the gap between violent conflict and lasting peace. Delivering critical infrastructure that supports the delivery of basic social services will form a crucial component of this integrated process. Without these essential services, people are faced with little option, but to support warlords and resort to a life of crime and violence for survival.

Of course, persistent conditions of insecurity prevent sustained and sustainable reconstruction. But without reconstruction, there can be no enduring stability. To ensure that reconstruction begins promptly, civil-military co-ordination in peace missions is critical. This calls for the establishment of new national/multilateral institutions, or the enhancement of existing ones, to bring together diverse peace mission actors, including the military, when

a crisis emerges, and that can effectively articulate integrated plans down to the operational level so that delays can be avoided.

Time is of the essence in peace missions: civilians must be able to complement the use of military peacekeeping at the earliest possible stages of a mission in order to promote development. Maintaining the needed momentum toward a stable society, that is, ensuring that early reconstruction has a lasting impact, will require deploying more civilian helmets on the ground. Seeing that most UN-contributing states have many trained and experienced military peacekeeping personnel, but few civilian peace building counterparts, the international community should significantly expand its civilian reconstruction capability to operate decisively in (potentially dangerous) reconstruction zones. Without a robust civilian capacity, military forces will continue shouldering the burden of reconstruction (a critical task for which military troops are not suited to undertake on a sustainable basis), and transitions are bound to be dangerously prolonged.

Notes

- 1 Statement by Jean-Marie Guéhenno United Nations Under-Secretary-General for Peacekeeping to the Challenges Project, London, UK, 2 March 2005, online available at <http://www.un.org/Depts/dpko/dpko/articles/article020305.htm>.
- 2 Aside from the longitudinal research undertaken by World Bank researcher Paul Collier and others regarding the sustainability of peace efforts, one UN report estimates that roughly half of all peace missions have a chance at succeeding after the signing of peace agreements. The chances appear to be even slimmer when warring parties fight for control over valuable resources. See, UNDG/ECHA Working Group, Report on Transition Issues, February 2004, p. 14.
- 3 United Nations, Report of the Secretary-General on the Work of the Organisation, Supplement No 1 (A/53/1), 27 August 1998, p. 8, par. 70. United Nations, Report of the Secretary-General: In larger freedom: towards development, security and human rights for all, A/59/2005, 21 March 2005.
- 4 Figures 1 and 2 are adapted from Binnendijk, H and Johnson, S E 2004. Transforming for stabilisation and reconstruction operations. Centre for Technology and National Security Policy, National Defence University. National Defence University Press, pp. xv-xvi.
- 5 Interview with Dr. Adi Paterson, Group Executive (DDG): Science and Technology Expert Services, South African Department of Science and Technology, 11 August 2006.

- 6 Kaldor, M 1999. New and old war: organised violence in a global era. Stanford, California: Stanford University Press, p. 133.
- 7 Bhayankaram, A P June 2004. Getting infrastructure priorities right in post conflict reconstruction, United Nations University (UNU) and World Institute for Development Economics Research (WIDER) Conference on Making Peace Work, Helsinki, Finland, 4-5 June 2004, accessed at <http://www.wider.unu.edu/conference/conference-2004-1/conference2004-1.htm>.
- 8 United Nations, Report of the Panel on United Nations Peace Operations, A/55/305-S/2000/809, August 2000. It is significant that this report does not include peace enforcement operations as part of the UN's repertoire to respond to conflict. Instead, it firmly states: 'the United Nations does not wage war, [but when] enforcement action is required, it has consistently been entrusted to coalitions of willing States, with the authorisation of the Security Council' (p. 10, paragraph 53). See also, Supplement to an Agenda for Peace (A/50/60 - S/1995/1), 3 January 1995. In this document, the UN Secretary-General, reporting on the work of the Organisation, outlined six instruments, namely: 1) preventive diplomacy and peacemaking; 2) peacekeeping; 3) post-conflict peace building; 4) disarmament; 5) sanctions; and 6) enforcement action.
- 9 de Coning, C 2005. The civilian dimensions of the African Stand-by Force system. *Conflict Trends*, 4/205:13-14.
- 10 de Coning, C March 2006. Quick-Impact Projects, in de Coning, C (ed) 2006. CIMIC in UN and African Peace Operations, African Centre for the Constructive Resolution of Disputes (ACCORD), pp. 217-223.
- 11 Fiawosime, A. An Integrated Approach to Peace Support Operations Overview of UN and International Humanitarian Agencies in Liberia, in: Aboagye, F B and Bah, A M S (eds) May 2005. A tortuous road to peace: the dynamics of Regional, UN and international humanitarian interventions in Liberia. The Institute for Security Studies, p. 180.
- 12 Isango, E 8 August 2006. DRC: a struggling nation awaits new help. UN Office for the Coordination of Humanitarian Affairs.
- 13 Hazen, J M 2007 (forthcoming). Can Peacekeepers be Peace builders? *International Peacekeeping*, 14 (3).
- 14 The relationship between war and economy has given rise to what some refer to as a 'war economy', an economic system based on violence in which profit is generated not out of a final military victory (much like a civilian economy in times of war) but out of war itself. See, for example: Ballentine, K April 2004. Program on economic agendas in civil wars: principle research findings and policy recommendations. International Peace Academy.; Reno, W 1998. Warlord Politics and the African State. Lynne Rienner: Boulder, Colorado; Duffield, M Fall 1999. Globalisation and war economies: promoting order or the return of history? *Fletcher Forum of World Affairs*, 23/2.

- 15 See for example, Hansen, W, Ramsbothan, O and Woodhouse, T March 2001: *Peacekeeping and Conflict Resolution*, Bergof Research Centre for Constructive Conflict Management,, p. 22.
- 16 Particular reference is made to the draft UN Resolution A-50-19 (1995) that was proposed by Argentina.
- 17 Remarks made by Jean-Marie Guéhenno, UN Under-Secretary-General for Peacekeeping, at a workshop on the theme, State-building and strengthening of civilian administration in post-conflict societies and failed states, 21 June 2004, New York, hosted by the Crises Management Initiative (CMI) and the International Peace Academy (IPA).
- 18 After the 11 September 2001 attacks, failing states (eventually) mattered to America because they were now considered as posing a serious threat to its national security. This perception, therefore, substantially reinforced views among American policy-makers that it was important to have an enhanced civilian capacity in government that could help stabilise and reconstruct states that could potentially harbour international terrorist and organised crime networks. See Serafino, N M and Weiss, M A 13 April 2005. *Peacekeeping and conflict transitions: background and congressional actions on civilian capabilities*, Congressional Research Service.
- 19 African Union (AU), Draft Policy Framework for Post-Conflict Reconstruction and Development (PCRD), Addis Ababa, Ethiopia, 2006. The New Partnership for Development (NEPAD) Secretariat, African Post-Conflict Reconstruction Framework, Pretoria, South Africa, June 2005.
- 20 Bakhet, O 2001. The lessons of Development in Reforming United Nations Peace Operations, speech delivered at the UNITAR-IPS-JIIA Conference on 'The Reform Process of United Nations Peace Operations', 2-3 April 2001, Singapore,' accessed at http://www.wundp.org/bcpr/pubinfo/transitions/2001_05/ob_speech.htm.
- 21 Significantly, these principles are increasingly being noticed by South African policy makers and academics alike. See, for example, Draft White Paper on South Africa's Participation in International Peace Missions, p. 22 (forthcoming); South African Department of Foreign Affairs, Strategic Plan 2005-2008, pp. 28, 69; South African Department of Public Works, Strategic Plan 2006-2010, p. 52; South African National Defence Force Peace Support Operations Doctrine (JWT 106 Part 2), pp. 2-7 – 2-8.; Cilliers, J 2004. Consolidating Peace and Security in Africa: recommendation to the Commission for Africa. *African Security Review*, 13/4:118; Barungi, B and Mbugua, K 2005. From peacekeeping to peace building: post-conflict reconstruction in Africa. *Conflict Trends*, 4:30-33.
- 22 Ms Nozizwe Madlala-Roudledge introduced the concept at the 2004 African Defence Summit in South Africa. She is currently the Deputy-Minister of Health.

- 23 Fassihi, F et al 19 April 2004. Early US Decisions on Iraq Now Haunt American Efforts. *Wall Street Journal*.
- 24 'Groundwork' is the operative word, as short-term interventions must always complement long-term commitments.
- 25 Wiharta, S June 2006. Peace building: the new international focus on Africa, p. 141, in: Stockholm International Peace Research Institute (SIPRI), *SIPRI Yearbook 2006: Armaments and International Security*, Oxford: Oxford University Press.
- 26 Eide, E B, Kaspersen, A T, Kent, R and von Hippel, R May 2005. Report on Integrated Missions: Practical Perspectives and Recommendations, Independent Study for the Expanded UN ECHA Core Group, pp. 52.
- 27 Gourlay, C March 2006. Lessons learnt study: rosters for the deployment of civilian experts in peace operations, [online]. Available at <http://www.peacekeepingbestpractices.unlb.org>.
- 28 African Union, Draft policy framework for the civilian dimension of the African Standby Force, discussion document prepared for consideration at the Technical Experts Workshop on the Civilian Dimension of the African Standby Force, scheduled for 28 August – 1 September 2006, at the Kofi Annan International Peacekeeping Training Centre in Accra, Ghana.
- 29 Isango. DRC: a struggling nation awaits new help, op cit.
- 30 Hari, J 2006. The war the world ignores, *The Sunday Independent*, 14 May 2006, p. 9.
- 31 On the question of civil-military interoperability, see, for example, Stephenson, J March 2006. Civil-military cooperation: a field perspective. *Foreign Service Journal*, pp. 55-62.

CHAPTER 6

SYNERGIES AND PITFALLS: THE ROLES AND CONTRIBUTION OF THE PRIVATE SECTOR IN PEACE OPERATIONS WITHIN AFRICA

Doug Brooks and Derek Wright

I. Introduction

The private sector has enjoyed a growing presence in peace and stability operations in Africa since the end of the Cold War. This presence is not new, but private firms are certainly under greater demand than ever before, and the range of operations and roles played by the private sector are increasing with each successive peace operation on the continent. There are reasons for this expansion, and there are also concerns - especially about private security companies (PSCs) which bring with them armed security capabilities. The peace and stability industry believes that it is good for legitimate concerns to be aired and addressed, as this will lead to a healthier, more responsive and reliable industry in the long run. Criticisms should not, however, override the obvious necessity to utilise the capabilities the private sector has to offer during complex humanitarian emergencies, including the provision of private security. All resources should be made available to policy-makers striving to bring peace and stability to the African and other continents.

There is often a mistaken notion that the peace and stability industry is homogeneous. In actuality, there are three main categories within the peace and stability industry. In terms of the diversity and range of functions of the industry, the matrix below serves to define the components of the each broad category and its functions.

Figure 4: Functional categories of the Peace and Stability Industry

Company type	LSCs: Logistics and Support Companies	PSCs: Private Security Companies	SSR and D: Security Sector Reform and Development Companies
Service goal	Logistics and Technical support	Security	Sustainable development, stability and security sector training
Sample services	• Mine clearance • Logistics and supply • Risk consulting • Medical services • Construction/engineering • Waste management • Strategic transport	• Site protection • Travel and transit protection • Private security details • Threat assessment • Survival training	• Security sector reform • Democracy and governance • Economic development • Business development • Crisis mitigation and recovery
Sample companies	AMECO AYR Aviation Centigon Demining Enterprises Int'l Evergreen J-3 Global MAC International Main Street Supply and Logistics Medical Support Solutions Pacific Architects and Engineers PWC Logistics RONCO Security Support Solutions Toifor	ArmorGroup Blackwater EOD Technology Erinys Hart Olive Group OSSI-Safenet Reed, Inc SOC-SMG	Creative Associates Int'l MPRI PADCO AECOM

From a practitioner's perspective it is clear that the private sector has already become an indispensable partner for national governments and international organisations that are working to achieve effective peace operations. Services provided by the private sector include de-mining; medical support and logistical supply; heavy-lift aviation and transportation; helicopters;

logistics; security; disarmament, demobilisation and reintegration (DDR); and security sector reform (SSR), all on a scale and with a level of efficiency that had not been available to policy-makers in the past. Private companies have been integral to several peace and stability operations in Africa since the end of the Cold War, and will be even more integral to future operations as national governments, particularly those of external partners, and international organisations, continue to reduce their in-house capabilities due to budgetary and other constraints. These factors have combined to necessitate the search for new players to provide the needed resources.

However, the utility of the private sector in conflict and post-conflict environments has not yet been fully recognised or accepted by all policy-makers in Africa. On the one hand, some NGOs do have knowledge of the private sector's value, but are ideologically reluctant to acknowledge the benefits of using for-profit companies in peace operations. Sections of academia hold similar views. On the other hand, some African countries are seeking to regulate private sector operations, but in such a manner that many of their most valuable capabilities, such as speed and cost effectiveness, are largely undermined. Although prudence in the utilisation of the private sector is appropriate and necessary, the abject dismissal of the industry is likely to undermine peace operations and ultimately occasion more harm than good for post-conflict populations in Africa.

The chapter seeks to highlight the utility of the private sector in the provision of post-Cold War peacekeeping resources that Western countries are providing at increasingly reduced levels. With due consideration to the political and legal underpinnings of peace operations, the paper also outlines broad mechanisms for the regulation of the industry. It is opposed to any idea of abolishing the industry and therefore proceeds on the assumed need to enhance the industry.

II. The Private Sector: Inevitability or Indispensability?

Private sector services are a reality in African peace operations and have become the 'invisible elephant' in the room. Researchers and theorists studying peace and stability operations often limit their focus to militaries and non-governmental organisations, and ignore the enormous contributions already being made by the private sector. In reality, a considerable amount of the field work is being done by private firms contracted by the UN, AU and others in the international community to handle the logistics and technical

specialties that are essential to a successful peace and stability operation. The private sector is rarely acknowledged in the discourse on multinational and multidisciplinary peace operations. This is especially unfortunate as private firms offer the real possibility of revolutionising international efforts at conflict management, transformation and resolution.

There are a number of key reasons why the private sector is so important to international peace and stability operations. To start with, Western states (including NATO countries) have shown a depressing reluctance to support peace operations on the African continent with ground troops. This is due to other military commitments, such as the conflicts in Iraq, Afghanistan, and the general 'war on terror', a 50 percent reduction in the size of many Western militaries since the end of the Cold War, and a general lack of enthusiasm for becoming involved in conflicts with little direct relevance to their national interests. Consequently, substantive support for the contemporary complex peace operations is rarely provided by those with the best military capabilities in the developed world. To the contrary, Western partner nations are content to provide political approval, write the cheques and when necessary, deploy limited military and other national resources for limited periods under national commands in hybrid operations. Unfortunately, this Western detachment has sometimes hindered or helped to prolong effective peace operations in Africa and elsewhere.

As a result of this Western abdication, most troops contributed to peace and stability operations come from countries whose small military budgets and lack of inherent expeditionary capabilities prevent them from fielding properly equipped and well resourced military and other peacekeepers. This invariably leads to innumerable barriers to effective peace operations which, from deployment to complex humanitarian operations, require skills, equipment and training that are limited in the developing world. For example, militaries from developing countries lack the heavy air- and sea-lift capabilities necessary to move and supply military operations over long distances. There are similar issues with other types of equipment necessary to effectively run a complex peacekeeping mission, such as helicopters to provide operational and tactical mobility in countries lacking sufficient road and rail networks, as is typical of post-conflict countries in Africa. In addition, capabilities in road transportation and logistical management, as well as intelligence, planning skills and the expertise necessary for effective complex peace and stability operations are generally lacking within developing countries.

A gap therefore exists between the political will for participation in peace operations, which many countries in the developing world do have, and the capability to be truly effective in the field, which many do not have. It is this gap that the private sector has been instrumental in filling, particularly since the end of the Cold War.

III. Old and New Roles for the Private Sector

The private sector has been and is still being utilised in virtually every post-Cold War peace and stability operation within Africa. While motivated, disciplined and professional ground troops from national militaries are still essential, their effectiveness and value are severely constrained without the support and contribution of private sector capabilities. One operation where this serves as a good example is Darfur, where private firms have been supporting efforts in enhancing the capacity of the small AU Mission in Sudan-Darfur (AMIS), whose bases are dispersed throughout the area of operation. In this mission, helicopter support, specialised vehicle procurement, medical services and logistical support have been largely contracted to the private sector. Prior to the Darfur operation, the peace monitors in Sudan's Nuba Mountains - the Verification and Monitoring Team (VMT)¹ - were maintained by private contractors. This included the bases, transport, logistics and sustenance of the observers. This level of dependence on the private sector is hardly without precedent.

In West Africa, peace operations in Liberia and Sierra Leone during the 1990s benefited from private sector support ranging from helicopters, logistics, construction, communications and ground security.² Aside from the troops, the decision to deploy the regional and UN interventions in 2003 depended critically on private sector support. Led by ECOWAS, the intervention consisted of the ECOWAS Mission in Liberia (ECOMIL) personnel, many of whose troops had received peacekeeper training from private companies within the framework of the US Operation Focus Relief. The transport of troops to and from Liberia was largely handled by private companies, which also ran the helicopters and trucks in-country, as well as managed many of the troops' bases and supplied most of their logistical support. Although the mission was ultimately turned over to the UN Mission in Liberia (UNMIL) in late 2003, the private sector to date continues to provide logistics and training support to the new Liberian armed forces.

In the DRC the private sector is providing security for the facilities and personnel of the UN Operation in the Congo (MONUC), as well as the IDP camps, and the bases of some NGOs. Most of the aviation assets come from the private sector and several of the airfields are managed and operated by contractors as well.

These existing and emerging roles of the private sector were elaborated in a concept paper by the International Peace Operations Association (IPOA) in 2003, focusing on how MONUC could take advantage of private sector capabilities and capacities to vastly enhance the operational effectiveness of the mission.³ Among others, the proposed concept included large-scale, privately-run training camps for the Congolese military and police, the provision of additional aviation assets, logistical support and the running of a DDR programme, as well as a joint quick-reaction force of Congolese security forces and private police to support the MONUC mandate. Although the concept paper was never implemented - for obvious political reasons - it received considerable support from Congolese civil society, which felt frustrated by UN delays and constraints. Furthermore, the concept also served as a framework of the potential for private sector contributions to UN missions.

IPOA continues to propose new ideas and concepts to make better use of private sector services in support of African peace initiatives. Towards this end, IPOA has written two concept papers on potential private sector involvement in Sudan,⁴ convened a roundtable to discuss African security and development issues, and devoted significant space to African issues in its flagship publication, the *Journal of International Peace Operations*.⁵

IV. Filling the Void: The Special Case of Private Security Companies

Although Private Security Companies (PSCs) are an integral part of the greater peace and stability industry, they command special attention because they are often armed and have mandates that may in some circumstances permit the use of lethal force. PSCs are generally tasked with protecting the 'nouns' in areas of conflict - including convoys, VIPs, buildings, refugee camps, supplies, reconstruction sites, elections, etc. Beyond ethical and professional considerations, market forces serve as financial motivation for PSCs to provide high levels of quality and efficiency. PSC personnel also bring with them exceptionally high levels of skilled expertise. For some critics, it is this

very capability that makes the use of PSCs in peace and stability operations worrisome.

The major concerns about the role of the private industry mainly relate to regulatory framework, particularly transparency, accountability and recruitment. Some critics believe that there is inadequate accountability and control over PSCs in the field, arguing that because PSC personnel do not reside within a normal military chain of command, they could refuse to operate in times of crisis when their skilled expertise is needed most. Others also argue that it can be difficult to accurately ascertain whether or not a PSC is fulfilling its contract professionally, fearing that PSCs might create demand for services by either perpetuating conflicts or by fomenting new ones.

Additional concerns about the use of PSCs in conflict and post-conflict environments specifically revolve around the use of PSCs in Africa. In this regard, some critics raise the spectre of neo-colonialism and the belief that the weakness of some African states, coupled with the fragility of democracies within the continent, sharply contrast with the significant capabilities of the private firms and could actually lead to a greater destabilisation of the continent and a further erosion of state monopoly on the legitimate use of force.⁶ Other critics argue that the legal framework currently regulating the industry is not sufficient enough to guarantee that PSCs will be held accountable for destructive acts they commit in the field. They contend that acts such as fraud, abuse of the local civilian population, abandoning contracts or other transgressions relating to international humanitarian law and human rights law, would be less likely to occur or would be more easily dealt with if national militaries were utilised exclusively, instead of PSCs which could run away from justice.

Productive discussions regarding the potential use of the peace and stability industry have become difficult as many critics of the industry have come to evaluate the role of PSCs in an idealised military model in which all peacekeepers are deemed to be professional, motivated, mission capable and fully accountable under strict military legal systems.⁷ These critics seldom take into account that in an era of 'Westernless peacekeeping', the most capable states are not contributing their professional militaries. To the contrary, most current peace operations, especially in Africa, do not include militaries that come anywhere close to the idealised vision. Rather, many multinational peace operations in Africa are marginally sufficient for the task and commit the same unprofessional crimes that critics accuse PSCs of committing, including sexual abuse and exploitation, black market

economies and impunity, to name but a few. Thus, even though the number of peacekeeping troops with a sincere motivation to achieve mission success may dwarf those guilty of misconduct, considerable damage is done to the image of the mandating authorities and to the mission in question. However, contributing countries continue to rely on national militaries for peace operations because of the lack of an alternative.⁸

Such realities mean that it is not difficult for the private sector to be better and more accountable than some of their counterparts being used by the UN and other international bodies. Because clients write the contracts to which companies must adhere, they can and should therefore demand that the companies they hire serve at a higher level of professionalism than typical peacekeeping forces. Doing so will ensure that missions will be carried out properly and with the least amount of damage to civilian populations as possible.

From an industry perspective it is essential for legitimate concerns to be addressed in a realistic context. To this end, some organisations such as the International Committee of the Red Cross and the Swiss Government have engaged with private security companies to formulate common sets of rules and guidelines for the governance of PSC behaviour in the field. These include provisions on the status of PSCs in international armed conflict under international humanitarian law (IHL), state responsibility where the conduct of a PSC is attributable to the state, state responsibility where the conduct of a PSC is not attributable to the state, and other similar provisions.⁹ On its part, it is important for the industry to reassure current and potential clients of its willingness to address real problems that continue to cause concern among other actors.

In practice, professional companies within the peace and stability industry support responsible legislation and regulation, and recognise that elevated levels of oversight and accountability are beneficial to their long-term interests. Thus, IPOA and other Industry trade associations such as the Professional Services Council (PSC), the Private Security Company Association of Iraq (PSCAI) and the British Association of Private Security Companies (BAPSC) have been unified in their support for effective and rational national and international laws. Indeed, the industry has been at the forefront of developing standards, best practices and codes of conduct.¹⁰

From a competitive perspective, companies gain vast comparative advantages when the value of quality is recognised. From the perspective of a client

seeking effective security in a conflict or post-conflict environment, there are few advantages gained by hiring a PSC based solely on the lowest bid. As a point of emphasis, even though high-quality private security can be expensive, this cost is nothing compared to the cost in human lives that is more likely to occur when hiring an unprofessional security company. Trade associations have been keen to address industry problems, and should be utilised by policy-makers to the fullest extent.

Because inappropriate or illegal behaviour does have a negative impact on business and the industry as a whole, and because governments are their primary clients, PSCs understand clearly the implications that their standards of conduct and discipline have on their ability to continue to secure contracts in the future. As the industry has continued to mature, companies have become increasingly professional, going to great lengths to ensure that they employ only the most highly qualified and well-trained experts. These companies document their movements while in the theatre of conflict, report on incidents related to their contract, and take action when problems arise with their personnel.

The core personnel working for companies in the industry have military backgrounds, are excellent judges of risk, and are trained in risk management. This expertise translates into an ability to perform extraordinarily well under high levels of stress. In numerous cases, including Afghanistan, the Balkans, Liberia, Iraq and Sierra Leone, several companies - including logistics and support companies - have been willing to provide their services in the face of astonishing risk. These companies have often proved to be more robust than the military forces they are supporting, and have contributed so much to their missions that it is fair to say that without their help, it would have been difficult for the missions to succeed.

The use of PSCs for peace operations in Africa will continue to be a controversial topic, but the potential benefits are indisputable. PSCs are able to deploy to a conflict or post-conflict environment significantly faster than UN or other military forces. Whereas the UN requires several months to procure, transport, and deploy personnel and equipment in a zone of conflict, the most professional and capable PSCs are able to have significant assets on the ground within a matter of weeks. This speed therefore can allow PSCs to serve as an initial source of humanitarian protection in emerging conflict environments, after which they could be replaced or augmented by UN, AU, or other international forces as their mandates are formally put into action. Working as partners with international peacekeepers, PSCs can help

to expand zones of security, and thereby encourage the return of internally displaced peoples and stimulate economic redevelopment and investment.

V. Enhancing and not abolishing: towards regulatory legal frameworks and laws

By far the most fundamental concern regarding the utilisation of the private sector in conflict and post-conflict environments is the issue of ensuring legal accountability. Legal systems in areas of peace operations and fragile states are inherently corrupt, weak or nonexistent. Companies in the industry specialise at being able to operate in such environments. Most contracts are with Western governments or international organisations, with whom contract law can still be enforced, regardless of how chaotic the area of operation may be. In general, it is not overly difficult to hold companies financially accountable for their operations in conflict and post-conflict environments. Holding individuals and companies criminally accountable remains a far more complex problem, but it can be addressed in a variety of ways.

From an industry perspective there is a strong interest in developing more effective ways of holding individual employees criminally responsible. There are a number of reasons for this, the most basic being that governmental clients are likely to use more private sector companies once they are comfortable with the criminal accountability system that is in place. In addition, the professional individuals working for the companies want to be confident that they will not be subject to 'kangaroo courts' lacking international legitimacy that could lead to unjustified incarceration. Internationally accepted legal structures would go far to ensure that problems of accountability could be properly addressed, and would have the added benefit of reassuring companies that their employees will be dealt with fairly.

Although companies working for international agencies may sometimes operate in a legal grey area, those working in support of U.S. missions are actually accountable to myriad US regulations. These include the following:

- Anti-Torture Act, the Defense Base Act (DBA)
- Foreign Corrupt Practices Act (FCPA)
- War Crimes Act of 1996

- Military Extra-territorial Jurisdiction Act (MEJA), and
- Victims of Trafficking and Violence Protection Act

US companies are also bound by federal regulations such as the:

- International Traffic in Arms Regulations (ITAR),
- Federal Acquisition Regulations (FAR), and
- Defense Federal Acquisition Regulations Supplement (DFARS) applicable to 'Contractors Supporting a Force Deployed for Contingency, Humanitarian, Peacekeeping or Combat Operations' (June 2005), DoD Instruction 3020.41, 'Contractor Personnel Authorised to Accompany the US Armed Forces,' and other DoD Instructions and Regulations.

Companies based in other countries with a robust peace and stability industry have similar restrictions to companies based in the US. U.K.-based companies, for instance, must comply with the Private Security Industry Act of 2001, which outlines a system for the statutory regulation of the private security industry. France, Australia, and other countries around the world have created their own sets of rules and regulations in the effort to prevent private companies from engaging in a destructive or unethical manner.¹¹

In Africa, South Africa's parliament recently passed the 'Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Bill'.¹² Unfortunately, the bill ignores the legitimacy of an industry that has grown around supporting peace and stability efforts, and uses a sweeping set of rules and regulations in the attempt to severely restrict the ability of South African companies and personnel from engaging in activities in conflict and post-conflict environments. Despite constitutional questions about the legitimacy of the act, its passage is sure to have a chilling effect on peace operations globally. At best the bill will constrain South African citizens who have been instrumental in providing critical services for peace operations. At worst, by limiting the personnel allowed to serve with private firms, the bill could hamstring the UN and the AU in their efforts to assemble effective peace operations on the African continent.

Along with these and other rules and regulations already in place to help guide the international peace and stability industry, increased levels of responsible legislation are appreciated by the private sector. There is concern, however,

that some governments, such as that of South Africa, are actually decreasing the ability of the private sector to positively contribute to international peace and stability by over-regulating the industry.¹³

VI. Goals, Potential and Motivations

One must understand that the private sector is capable of revolutionising the capacity for the international community to undertake effective peace operations, but not the political will to undertake them. Private firms fill in for absent Western military capabilities and not only make peace and stability operations increasingly possible, they can often be the difference between success and failure. The limits that private companies face are at the political level in that they cannot unilaterally deploy or design effective international policy. Private sector enhancements to peace operations mean that policy-makers have more tools to work with and can expect better results from sanctioned peace operations. Ultimately it is political will, not commercial interests that will determine which conflicts will be addressed. The decisions to initiate a peace operation, and that mission's mandate, operational goals, and exit strategies, come only from states, governments and policy-makers, not from private sector companies.

The peace and stability industry offers a beneficial force multiplier effect to peace operations in Africa and elsewhere. Bringing specialised and highly capable personnel to peace operations does two things. Firstly, it vastly enhances the ability of peacekeepers to do their jobs and fulfil the requirements of their mandate. Secondly, it reduces the numbers necessary to carry out the mission. Having fewer personnel in the field lowers the overall cost of the operation, while at the same time reducing the impact that the operation has on local communities. This translates to a decrease in common peacekeeper-related problems such as sexual exploitation, human trafficking, HIV-transmission, and the development of large black markets.

Another benefit of using private companies in international peace and stability operations is that private firms often utilise numerous local employees. Specific contracts can sometimes limit this practice for security or other reasons, but it is generally the case that companies will hire as many local employees as possible. Hiring local nationals allows companies to keep their operational costs down, while at the same time contributing to the reconstruction and development of the local economy. Training locals in critical skills has benefits that are of value well after the companies have left

the theatre of operations, and is a long-lasting, positive spin-off in the use of private companies in conflict and post-conflict environments.

The sensationalism that accompanies discussions of private sector services in conflicts too often drowns out the reasons for the demand of these companies in the first place: ensuring effective peace operations. International peace operations are designed to save lives and end conflicts, and any debate over the legality and merits of the private sector should maintain that fundamental perspective. The private sector has shown a willingness to be transparent and accept oversight of their operations, and this fact should not be knowingly overlooked by its critics.

Ignoring the capabilities of the private sector or hamstringing the ability of private firms to fully support peace operations for ideological reasons causes unnecessary delay, risk and suffering for those most in need of help. The goal of international peace operations should not be to penalise private companies willing to provide critical services in support of international peace operations. In line with the goal of international peace operations to save lives and end conflicts, it must be recognised that this can no longer happen without the support of the private sector. To this end, the peace and stability industry must be viewed as a policy tool that makes effective peace operations possible.

VII. Conclusion and Recommendations

The use of private sector expertise is integral to African peace operations. Often treated as a problem or threat by outside analysts, private companies fill gaps left by absent Western militaries, offer ideas and solutions to complex problems and in a macro sense provide a real prospect to revolutionise international peace and stability operations. In other words, using the private sector ensures that the will of the international community has a way of becoming a reality. The industry openly supports appropriate safeguards, enhanced legal structures and professional oversight. The use of the private sector is already a positive development that will continue to help resolve many of the operational inadequacies and address some of the key expertise and capacity shortages that peace operations have faced for decades.

Professional companies welcome effective oversight because it gives them a competitive advantage over other firms. Further, industry standards such as IPOA's own Code of Conduct reveal how industry leaders have recognised the

concerns of governments, academia, the UN, and humanitarian NGOs, and proactively and openly moved to address them. This process of engagement with and collaboration between actors in the peace and stability industry and its critics has reached new heights through the medium of the industry associations to which many private companies belong. These associations help to facilitate interaction between the industry and those who seek higher levels of transparency and accountability. The industry has come far in terms of professionalism, co-operation with international peacekeepers and the development of its capabilities. In light of this maturation and the industry's willingness to work with its critics on issues of oversight and accountability, there remains no rational reason for ignoring the vast peace building potential of the private sector.

Notes

- 1 Berman, E G. African Regional Organisations' Peacekeeping Experiences and Capabilities, ACCORD vide [online] available at http://www.accord.org.za/ct/2004-2/CT2_2004%20PG%2027-33.pdf, p. 30 . The VMT, which was deployed in Southern Sudan (2003) by IGAD, comprised 35 monitors from Eritrea, Ethiopia, Kenya, Uganda and Sudan, as well as the AU and other Western countries (Italy, Norway, Netherlands, UK and USA).
- 2 Aboagye, F B (Lieutenant Colonel) 1999. ECOMOG, A Sub-Regional Experience in Conflict Resolution, Management and Peacekeeping in Liberia. Sedco, Accra, p. 167. The author cites the example of the PAE in this regard.
- 3 This document can be found on the IPOA website at <http://ipoaonline.org/en/publications/concept1.pdf>.
- 4 These documents can be found on the IPOA website at <http://ipoaonline.org/en/publications/research.htm>.
- 5 The Journal of International Peace Operations can be downloaded at <http://peaceops.com>.
- 6 This debate was raised repeatedly during South African parliamentary debates about the Prohibition of Mercenary Activity and Prohibition and Regulation of Certain Activities in an area of Armed Conflict Bill, 2005. For more information on this topic visit <http://ipoaonline.org/en/gov/southafrica.htm>. Information can also be found in: Leander, A 2004. African States and the Market for Force: The Destabilising Consequences of Private Military Companies Political Science Publications, University of Southern Denmark, Odense, Denmark; and Singer, P W 2003. Corporate Warriors: The Rise of the Privatised Military Industry. Ithaca: Cornell University Press.

- 7 Singer, P W (nd). Humanitarian principles, private military agents: some implications of the privatised military industry for the humanitarian community,. Book chapter in Wheeler, V and Harmer, A (eds) February 2006. Resetting the Rules of Engagement: Trends and Issues in Military-Humanitarian Relations. London: HPG Report 22, Humanitarian Policy Group.
- 8 Many of these observations came from the author's personal experiences in Cambodia, 1994, and Sierra Leone, 2000. For an account of some of these problems, see Cain, K, Postlewait, H and Thomson, A 2004. Emergency Sex and Other Desperate Measures: a True Story From Hell on Earth. New York: Miramax Books.
- 9 Expert Meeting on Private Military Contractors: Status and State Responsibility for Their Actions (Geneva: The University Centre for International Humanitarian Law, 29-30 August 2005).
- 10 The IPOA Code of Conduct can be found online at <http://ipoaonline.org/code>.
- 11 For more information on the rules and regulations guiding the peace and stability industry, please visit <http://ipoaonline.org/en/standards/laws.htm>.
- 12 For more information in the bill, including a copy of its most recent revision, please visit <http://ipoaonline.org/en/gov/southafrica.htm>.
- 13 Avant, D D 2005. The Market for Force: The Consequences of Privatising Security. Cambridge, Massachusetts: Cambridge University Press, pp. 143-177.

CHAPTER 7

AFRICAN REGIONAL AND EXTERNAL SUPPORT AND OUTSOURCING: THE NEED FOR A CLEAR REGULATORY FRAMEWORK

Raenette Taljaard

I. Introduction

The role and involvement of private security companies (PSC) and private military companies (PMC) has been a part of the African security landscape since the drive towards independence, when, in the immediate aftermath of post-colonial self-rule in the continent, mercenaries were often hired to overthrow newly independent governments or to combat liberation movements that were regionally recognised by the erstwhile Organisation of African Unity (OAU), as well as by the international community. This role and involvement of the private sector in newly independent Africa arguably evolved with the lack of consensus within the continent on a collective security mechanism on the one hand, and the dynamics of the Cold War, especially in the context of the decolonisation of the continent.¹ Such names as Colonel Bob Denard, Mark Thatcher and Michael Mann, have therefore gained the character of household names in the political psyche of the continent.

While freelance private sector involvement in Africa contextually started with mercenaries, the industry has since the end of the Cold War seen a transformation from 'the traditional mercenary outfits comprising renegade groups of military adventurers, into blue-chip corporations, occupying pride of place on the stock exchanges of the world's financial capitals.'² With some connections to governments, the post-Cold War private industry has emerged as a policy tool of Western authorities in providing assistance to regional peace missions within Africa. Thus, in addition to the role of such private companies as Sandline International and Executive Outcomes (EO) in shoring up the beleaguered government of Sierra Leone during the 1990s, one could also take note of other private logistical companies such as Pacific Architects and Engineers (PAE) and Vega Aviation in West Africa and Darfur, as well as such private military companies as Dyncorps in the transformation of the security sector in both Liberia and Southern Sudan.

The discourse around the role and involvement of the private security and military sector stems from the multiplicity of its roles - logistical, security and military - as well as its positioning between traditional and non-traditional areas of the security spectrum. Coupled with the motivations for profit by the industry, recent experiences in the employment of the industry have raised critical questions about the roles and involvement of the sector, particularly in regard to accountability and this has served to underscore the need for multi-layered regulation. The dilemma with the private security and military industry of the sector is summed up succinctly by Singer (2004), who has observed and argued that:

The rise of this new industry, however, raises a number of concerns regarding the relationship between public authorities and the military apparatus. Some firms have committed severe abuses in the course of their operations and have been employed by dictatorships, rebel armies, terrorist groups, and drug cartels. The hire of others has led to a rise of internal tensions inside certain states and even military coups and mutinies. Given the ultimate importance of the field in which they operate and the potential for serious abuses, a particularly worrying aspect is that the industry's position in the legal sphere remains ambiguous.³

This is more so the case in Africa, especially in post-conflict settings of fragile states, where the private security can play a benign or constructive role, but also a destructive one, in destabilising states and regions. Certainly, therefore, there is need for regulatory frameworks at both the national and regional levels, but also, to the extent possible, at the international level, in order to achieve a coherent security policy environment.

Against this background, the chapter focuses on the existing vacuum in various national, regional and international legal and regulatory frameworks to adequately differentiate between mercenaries and private military and private security firms. Such differentiation, though necessary in responding with credible regulatory frameworks, is a real challenge in the contexts of countries that are often marked by institutional weakness, leading to difficulties of enforcement. In addition, the paper offers a brief review of the experience with the AU Convention on Mercenarism, arguing that the Convention reflects the post-colonial context within which it was first drafted - the prevalence of mercenaries in fragile democracies - and has therefore made inadequate efforts in creating clear conceptual distinctions between

mercenaries, and PMCs and PSCs, in the more modern complex arena of the involvement of the private sector in war and peace.

This analysis seeks to demonstrate clearly that the existing AU-wide regulatory frameworks do not adequately constitute a clear and comprehensive policy response geared towards regulating the increased pressures on the involvement of the private sector in peacekeeping and peace enforcement operations in often resource-constrained environments. The challenge this raises is in the drafting of unambiguous military outsourcing policy as part and parcel of the evolving African peace and security agenda and architecture.

At the national level, South Africa is one of the few countries in Africa that have attempted to craft a regulatory framework to address the provision of foreign military assistance via private entities. Given this reality, an analysis of South Africa's Regulation of Foreign Military Assistance (RFMA) Act highlights some of the core weaknesses of enforcement that have arisen in the past near-decade of its implementation, which Roberts (2006) sums up as follows:

Another effort was made to stamp on mercenaries. As South Africa's 1998 law against them - one of few in the world - had proven so difficult to apply, the country's rulers promised a new act by 2006. It was even tougher, requiring anyone who sells any service in a conflict zone to be licensed. Intended to stop South African ex-soldiers fighting in Iraq, it could also hinder aid workers and journalists in war zones. The chances of enforcing it looked slim.⁴

In discussing South Africa's newly enacted legislation, against the past experiences of the RFMA, however, the paper points out the widening net that the new legislation has cast to include private security companies. In this regard, it argues that such a policy precedent can influence policy networks in the AU context and particularly impact on a future AU-wide policy framework on regulating military outsourcing.

II. Framing the Case for Clear Regulatory Frameworks

There can be little doubt that the international laws of war have not been adequate to the task of dealing with the presence of profit-seeking private entities as opposed to normal state-associated military actors. These actors

have introduced profound new challenges to conventional conceptions of civil-military relations and security sector governance. The end result has been that most international law, including the UN Convention against the Recruitment, Use, Financing and Training of Mercenaries, as well as the 1977 Additional Geneva Protocols, has been ineffective in addressing the new phenomenon of PMCs and PSCs. The codifications have found it difficult to adequately grapple with the question of mercenarism and its definition, let alone create clear differentiating definitions that seek to distinguish between the old paradigm of mercenaries and new modern multi-billion dollar PSCs and PMCs listed on stock exchanges. In addition, it took over a decade for the UN Convention to garner sufficient support to reach the level of enforceable international law, without the ratification of any of the major country-suppliers of private security and private military actors, namely the UK, USA and even South Africa, at a latter stage. This of course has hampered its efficacy in public international law.

As Singer (2004) argues: 'the general result is that contrary to popular belief, a total ban on mercenaries does not exist in international law. More importantly, the existing laws do not adequately deal with the full variety of military actors.' These shortcomings in the international context also affect attempts to regulate private actors, particularly PMCs, and notably at the AU level, despite the existence of the AU Convention on Mercenarism, which also fails to address the conceptual complexities of the modern environment of the private security and military industry.

Worse still, given that national regulation has been the only real attempt to grapple with these issues, the multinational nature of many of these firms has meant that they could effectively forum-shop different regulatory regimes for more lax environments, to act as corporate headquarters. True legal enforcement of any newly codified provisions will therefore have to entail extra-territorial application, as it is in this regard that a new AU codification and policy on outsourcing will have its greatest impact in minimising the scope for forum-shopping and in ensuring a blanket AU-wide extra-territorial coverage of its provisions.

III. Understanding the Regional Gaps: the AU Convention on Mercenarism

Africa's first regional treaty that directly addressed the issue of mercenarism, the OAU Convention for the Elimination of Mercenarism in Africa (CEMA), was adopted in 1977 against the post-colonial backdrop of mercenaries being used as a tool for destabilisation by overthrowing newly independent governments or as a counter to African liberation movements. The resistance to the presence of private actors in arenas of war and peace in fragile states is therefore a highly emotive question confronting policy-makers in Africa. The OAU Convention declared the actions of mercenaries as general crimes against the peace and security of Africa. This was undoubtedly the most aggressive regional criminalisation of mercenarism. Despite this active, albeit selective criminalisation of mercenarism, even though the codification may have been strong, the enforcement dimension again fell far short of what was desired with regional and/or local state compliance, which often lag behind the intentions present in the treaty itself.

It is arguable that the inadequacies of the Convention in addressing the complexities of PMCs and PSCs, especially in African peace missions, lies in the definition of mercenarism. For instance, in its Article 1 (Definition), the AU Convention states that:

The crime of mercenarism is committed by the individual, group or association, representatives of a State and the State itself with the aim of opposing by armed violence a process of self-determination or the territorial integrity of another State that practices any of the following acts:

- 1) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs armed forces partially or wholly consisting of persons who are not nationals of the country where they are going to act, for personal gain, material or otherwise.

And in terms of enlistment and enrolment,

- 2) Enlists, enrolls or tries to enrol in the said forces.
- 3) Allows the activities mentioned to be carried out in any territory under its jurisdiction or in any place under its control or affords

facilities for transit, transport or other operations of the above mentioned forces.

- 4) Any person, natural or jurisdictional who commits the crime of mercenarism commits an offence considered as a crime against peace and security in Africa and shall be punished as such.⁵

The elements of the foregoing definition therefore suggest that there are at least two core conclusions that can be drawn from the existing codification in the AU. Firstly, it points to a definitional lacuna in the AU context in which the old style mercenaries are collapsed in definitional terms with the more modern emergence of PMCs and PSCs in the arena of peace and security. Secondly, given the history of mercenarism on the continent and the deep-seated political hostility to mercenarism, the hurdles to a debate on private sector involvement are understandable and will imply that the debate will never take place in an a-historical context.

The AU Convention has not been broadly supported and institutionally internalised and enforced. In a review of eight countries that have subjected themselves to the African Peer Review Mechanism (APRM), for instance, Aning, Addo, Birikorang and Sowatey have highlighted the formidable hurdles that states face in confronting the conventional mercenary threat:

While aware of the need for state response to mercenaries, we realise the several potential difficulties in implementing the commitments agreed to by states. First is the need to interrogate the level of state's capacity to actually prevent mercenaries from using its territory. Second is the question of what states can actually do when faced with the challenge of the transit of mercenaries or their equipment through their territories ...While the rationale for CEMA is critical and useful, the implementation of the constitutive principles and norms underpinning it will be difficult and the Convention appears in need of an update.⁶

These institutional hurdles are formidable in respect of the enforcement of the CEMA and highlight the conundrum of weak states addressing the conventional mercenary threat. In addition, however, it also highlights the fact that far more than merely updating the CEMA, there is need for a new codified policy, as well as an enforcement capacity. It is clear that the AU has not developed a clear codified approach or a more clearly defined policy on the new and increasingly globalised phenomena of PMCs and PSCs. Given

that many G8 countries may wish to see their PMCs and PSCs engaged in AU peace missions - and are indeed doing so as a matter of external policy - as opposed to the military personnel of their national armed forces, it is clear that the AU requires a more considered response, both in terms of a new updated regulatory instrument. Also, such a policy and institutional response will be a requisite for military outsourcing within AU missions, more so as the AU African Standby Force (ASF) with its regional brigades become operational over time.

IV. Regulation in South Africa

Setting a regulatory agenda: the RFMA model

When the new post-Apartheid South African government passed the RFMA in 1997, it constituted one of the most direct attempts to regulate the private military industry in the form of specific stipulations on the provision of foreign military assistance. Under the RFMA, any PMC based in South Africa was compelled to seek authorisation from the National Conventional Arms Control Committee (NCACC) for each contract it sought, irrespective of whether the operation was local or abroad.

Despite introducing a rigid new licensing and authorisation regime, the legislation has not acted as an effective deterrent to firms that have continued to operate beyond the reach of the RFMA, often not even seeking authorisation for its various operations. The RFMA has never fully been tested for its legal robustness as most cases and charges brought under its auspices have resulted in plea bargain agreements between the prosecuting authorities and the accused. Cases involving alleged mercenaries in the Ivory Coast, Zimbabwe and Equatorial Guinea, including the arrest of Sir Mark Thatcher, as well as the involvement of scores of private security workers in Iraq, Afghanistan and the DRC, have all highlighted different shortcomings in the enforcement and even definitional codification of the South African Act.

While it may be the most direct effort to regulate PSC and PMC activity thus far within the continent, the implementation of the RFMA has been fraught with many difficulties. In this respect, Avant (2005) identifies at least three potential fault-lines in the RFMA that have resulted in difficult enforcement action.⁷ Firstly, she argues that the definitions contained in the Act are both

too vague and cast too broad a definitional net in trying to regulate activities that cannot be regarded as 'military', resulting in considerable regulatory uncertainty and arbitrariness. Secondly, she points out that the legislation excludes 'humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict.' In more precise terms, this is the 'loophole' that some PSCs have utilised and are still utilising in claiming that their activities in such theatres as Iraq are completely legal, despite a NCACC statement to the contrary in January 2004. Thirdly, there is a level of distrust in the PSC community as to the fair execution of the Act that hampers its effectiveness and, arguably, creates disincentives in applying for a licence.

Whatever the shortcomings of the legislation, the RFMA has certainly served to highlight the conceptual and practical difficulties inherent in attempts to regulate the emerging private sector as a player in this field.

The South African experiences under the RFMA serve to highlight some of the key challenges inherent in the regulation of the private security and military industry. The first glaring lacuna that this highlights is the lack of clarity in the definitions in terms of mercenaries, PMCs and PSCs. Secondly, the experiences demonstrate the tremendous hurdle in obtaining adequate evidence from out-of-area theatres to secure convictions through prosecutions, resulting in decisions by prosecuting authorities to opt for plea bargains instead. Thus, given the nature of operations that are often conducted abroad, the evidential burden can be near insurmountable. Thirdly, the definition of a 'conflict area' is open to considerable discretionary judgment, and possible alignment, arguably, with foreign policy positions of the more powerful states, as is clearly the case of the coalition stability operations in Iraq.

Even though the RFMA makes for a constructive foreign policy with dividends for national and regional peace and security, it generates considerable legal uncertainty due to the tremendous administrative discretion present in procedures and the lack of clear criteria for determining licensing approval requests. Lastly, all the cases in question have highlighted the challenge of extra-territorial 'offences' or 'breaches' being committed and the limitation of the regulation to be binding beyond national boundaries. In addition, the Zimbabwe-Equatorial Guinea case has particularly highlighted, through the South African Constitutional Court ruling, the importance of dual criminality for extradition requests to be successful with regard to RFMA-related offences. These point to the importance of interlocking regulation

at the national, regional and international levels if any regulation is to be workable.

It is arguable, therefore, that in light of these challenges and gaps the new draft legislation before the South African Parliament should aim to go much further than plugging any 'loopholes' in the RFMA and, more pertinently, grapple with the thin line between PSC activity in conflict zones and 'tip-of-the-spear'-style PMC activity, if not modern-day mercenarism. Whether this will be a workable proposition or not will only be judged once the legislature concludes its ongoing deliberations on the draft law.

Plugging the holes and stitching the fibre: the model of The Bill on the Prohibition of Mercenary Activities.

The 2004 arrest of alleged South African mercenaries in Zimbabwe and Equatorial Guinea, as well as the involvement of thousands of South Africans in the PMC and PSC security boom in Iraq, prompted the South African government to embark on a review of the RFMA in February 2005.⁸ But as Kwok (2006) points out:

While PMCs are not inherently war criminals - nor should they be viewed as such - instituting regulations such as the ones being created in South Africa is necessary to ensure that PMCs behave within a framework of law to which they are held personally accountable.⁹

Contrary to Kwok's view, however, the new Prohibition of Mercenary Activities and Regulation of Certain Activities in a Country of Armed Conflict Bill - currently awaiting Presidential assent - seeks to address many of the RFMA's challenges, and may fail entirely due to its confused objectives, its possible overreach and its contradictions. As a result, the Bill could cause immense legal uncertainty if implemented in its current form. Worse still, it may be found to be unconstitutional if tested in the South African Constitutional Court and, if that occurs, introduce greater uncertainty in a country that has made considerable efforts to codify some forms of outsourcing regulations in its national legislative fibre.

It is pertinent to outline the reasons why a Bill that is carefully crafted to enhance an existing regulatory framework of the private industry stands the chance of failure. One of the key reasons is found in the explanatory memorandum of the Bill, which highlights that it has been designed to

address 'some deficiencies' in the RFMA under which the government has only been able to secure a few prosecutions. Obviously because the limited convictions were in nearly all instances the result of plea bargain agreements between the accused and the National Prosecution Authority (NPA), the explanatory memorandum does not conceal the Bill's objective of dealing explicitly with concerns about events in Equatorial Guinea and the fact that private military and security companies have been recruiting South Africans to offer these services in areas of armed conflict such as Iraq.

Primarily, therefore, the Bill seeks to extend the regulatory net, beyond the traditional framework of mercenaries, to private security firms, as well as an expansive extra-territorial application for its regulatory reach, by crafting a complex new regulatory regime that is so filled with administrative discretion that it is likely to lead to legal uncertainty. It is not only therefore the power of the precedent setting nature of the South African legislation that will render it a compelling case study in the AU context, but also its extra-territorial application.

Broadly speaking, the Bill is informed by fundamental national and regional concerns and moral arguments, some of which were expatiated on by the South African Minister of Defence, Mosiuoa Lekota, during the Bill's presentation to the South African National Assembly from August 2005 and subsequent discussion. In these statements, it is clear that the Bill aims at addressing the following issues of mercenarism and military activities in armed conflicts involving citizens:

- a) Regulating the activities of South Africans in areas of conflict abroad in order to help set standards and establish an acceptable and vibrant security industry.¹⁰
- b) The moral imperative of dealing with the scourge of mercenaries in poor areas of the world, especially Africa where, as killers for hire, they rent out their skills to the highest bidder, regardless of the political agenda, with detrimental consequences for democratisation within the continent.¹¹
- c) The industrial profit motive in which anybody with money - individual, syndicate or non-democratic governments without human rights culture or tradition - could hire and turn them into 'killing machines or cannon fodder, to achieve their own objectives, or in favour of their

paymasters, in subversion of democracy and good governance in general'.

- d) Coupled with technological advances and an increasing need for highly-skilled military personnel, the emergent global trade in hired military services for many privatised defence functions in the wake of massive cuts in defence budgets and demobilisation of excess personnel over the past two decades, had seen an upsurge in private military or security firms that had assumed greater roles in conflict areas, such as Iraq, guarding installations, delivering logistical supplies, operating aircraft, and providing medical support.
- e) The function of this relatively new industry raised a range of concerns, including human rights abuses committed by some firms and the fact that in many instances, their operations had led to increased internal tensions and sometimes even military coups: 'these firms, falling as they do outside [of government], are not regulated by international law nor are they accountable to international bodies.'¹²
- f) Consequently, there was a high potential for abuse and serious concerns over the ambiguous position of the industry in the legal sphere, necessitating national level regulation in the hope of both superior legal definition and enforcement.

In the context of the security sector reforms that the country had experienced in the post-Apartheid period, South Africa was concerned that, among other things, its citizens in foreign militaries could be involved in wars of conflict in contravention of international law and South African foreign policy objectives, thereby damaging the country's reputation regionally and internationally. Indeed, the Minister argued further that the South African National Defence Force (SANDF) could, at some stage, be confronted by foreign forces containing its own citizens, a '...possibility...not as remote as it might seem, more especially in peacekeeping operations.'¹³ On the other hand, it had been argued that the South African government might also have to intervene, if the activities of any South African security company went disastrously wrong in political and security terms.

In light of these moral, political and security arguments, therefore, regulation would help set standards and establish an acceptable and vibrant industry. In this context, the stated objective of the Bill is not its abolishing as 'there is no reason why this industry that provides essential services in the defence

sector should be associated with dark and sinister forces.’ To the contrary, however, the Bill puts a complete ban on mercenary activities, requiring companies or individuals wanting to render military assistance or security services to any party to an armed conflict to obtain permission from the NCACC, while banning South Africans from enlisting in foreign armed forces, unless authorised by the NCACC, which is mandated as well to register all humanitarian assistance organisations.

The Bill is thus a clear attempt to tighten the provisions of the RFMA vis-à-vis private security companies and aims to close certain ‘loopholes’ that were used to broaden and consolidate the scope of operations of these firms in controversial conflict areas under the banner of ‘humanitarian assistance’. To the contrary, though, the Bill, in its current draft form, is beset by a number of difficulties which may and need to be addressed in upcoming public hearings.¹⁴ Thus, in spite of the good intentions behind the Bill, it has the potential to make the regulatory framework in South Africa more unworkable and arguably even less effective than in its current form.

V. Towards a Holistic Regulatory Framework: What Future Policy Agenda?

Given the clear complexities that have arisen in other countries that have extensively made use of military outsourcing, primarily the US experience, there can be no doubt that nation states, as well as the international community and regional organisations, require clear sets of rules that directly address and create clear regulations for military outsourcing, based on the core tenets of democratic accountability and civilian oversight of the military, irrespective of the level of private sector involvement.

In Africa’s post-conflict transitional transformation, restructuring or the integration of former combatants from opposing belligerent forces, the extensive use of private actors through military outsourcing, is likely to introduce considerable additional layers of complexity in the accountability chain, where civilian and legislative oversight of the military is weak. This scenario may also apply to post-conflict peace missions or enforcement operations by the ASF and its regional brigades.

Even where such private actors may wish to play a part in bringing peace and security in Africa’s conflict zones, primarily for private commercial gain, it is clearly imperative that the continent and the AU Peace and Security Council

(PSC) should consider undertaking high level consultations and debate on the importance of having clear military outsourcing policies as part and parcel of Africa’s emerging peace and security architecture, particularly in the framework of the Common Defence and Security Policy and the G8-AU Joint Action Plan, within which framework Africa’s external partners outsource support and assistance towards the AU and other sub-regional mandated peace missions, including the establishment of the ASF.

It is to be argued that whilst private sector players may have a role to play in the AU peace and security architecture, they cannot be left to a dynamic system of self-regulation in the context of the continent’s fragile states and democracies, especially in countries and regions that are emerging from conflict or are still engulfed in conflict with the possibility of adopting robust peace mission and peace enforcement mandates. In such circumstances there is an unequivocal need for clear and unambiguous rules as a prerequisite for private sector involvement.

In this context, Singer (2004) once again provides the most cogent advocacy for ensuring that the AU has a clear policy on military outsourcing through solid codification:

This vacuum in the law should thus be of concern not only to those who believe in the power of legal norms to shape good behaviour, but also to those who seek to provide some order to the international security sphere.¹⁵

This twin-imperative of seeking to set standards and enhancing security can be no more prevalent than in the context of the AU where member states within the newly emerging peace and security architecture are at widely divergent stages of the evolution of peace and the consolidation of democratic institutions - a challenge that clearly mitigates against industry self-regulation and rather advocates for a codified policy on outsourcing.

Whilst the call for self-regulation levelled by PMCs and some PSCs in support of their activities are mostly aimed at heightening the level of international respectability of these entities as legitimate player in modern war and peace, there can no doubt that the AU has a unique opportunity to set a course in directly addressing the grey areas that currently exist in public international law, through with a clear AU policy framework on military outsourcing. Because this may be the obvious, the real challenge in confronting similar hurdles to those currently confronted by the international community,

including the hurdle of political will, is the more profound need to grapple with the question as a matter of urgency, given the prevalence of weak states and fledgling transitional institutions in many conflict-prone states and regions in Africa. The corollary to this setting of a policy agenda will clearly imply a concerted effort to build the capacity to enforce a new policy framework aimed at regulating private actors within the continent.

To such an end, the political backdrop that collapses all definitions of PMCs and PSCs into a catch-all mercenarism context within the continent should be rejected in favour of a more considered and concerted definitional framework that makes clear distinctions between the complex categories of private industry actors, as well as addresses the lacuna of the wide-ranging administrative discretion in the policy precedent of South Africa's new legislation. This is more imperative if South Africa's model of regulatory legislation is not to be blindly followed as a normative framework.

In this regard, the AU PSC can and should play an important role in setting standards and seek to establish a moratorium-regulated register of firms, limited to very specific contracts of a logistical nature in support of AU peace missions, or other private sector involvement of a bilateral nature that is nonetheless regulated within multilateral regional arrangements. This new specialised structure should be the key implementer of a new CADSP mechanism on military outsourcing.

At this stage of the evolution of the AU peace and security architecture, in the context of the challenges the AU PSC has been particularly confronted with in Darfur, as well as the logistical support it has received from the private sector in support of the AU Mission in Sudan-Darfur (AMIS), the time for a full review of this first crucial mission and all its policy implications, including the use of private actors, is of critical importance for future policy within the continent. In addition, such a policy should offer an opportunity to codify quite clearly the relationship between the traditional military forces and private actors, in order to counteract any 'mission-creep' in favour of the private sector, especially in the context of weak states and fragile democracies.

Kwok (2006) makes a salient statement about the role of private actors as part of the USA's military efforts in Iraq which, arguably, finds a resonance in the AU post-conflict reconstruction environment:

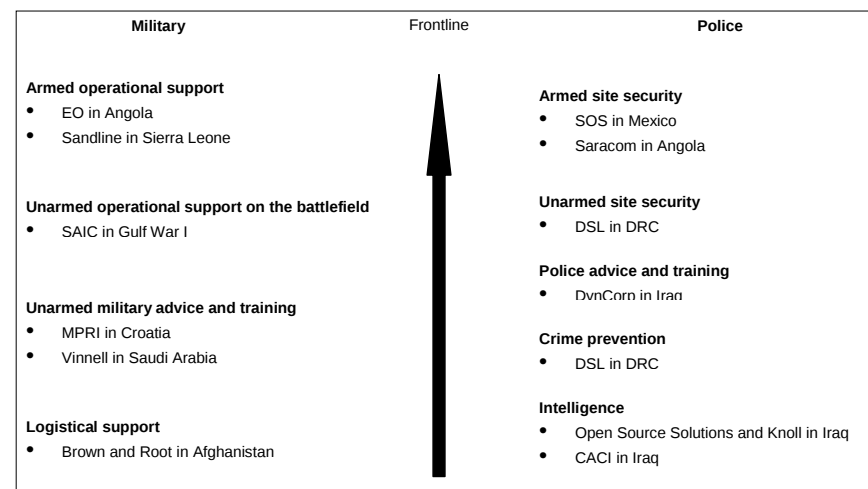
The US military, especially in its maintenance of supply and logistics support systems, requires the skills and manpower that PMCs provide. However,

to ensure that PMCs do not behave like Machiavelli's mercenaries, the burgeoning PMC industry should be regulated. The market for private security contracting is not yet mature, and it will require greater control and a clearer set of responsibilities in order for PMC services to complement the US military's work rather than undermine it.¹⁶

It is pertinent to note that such concerns are raised cogently with respect to a much more sophisticated system of military outsourcing in a context where the US Congress and Senate have recently become more assertive in aiming to exercise oversight over the outsourcing of military functions by the Pentagon. Contextually, therefore, this has clearly created a context where comparative policy-making would suggest that within the context of a very different African environment with many fragile states and democracies, the AU will have to take even clearer steps to ensure that the work of private actors complements and does not undermine constructive efforts towards peace and security within the continent, including peace mission and peace enforcement deployments by the ASF when it becomes operational.

In aiming to set such a clear set of benchmark definitions as a model for determining what to regulate through a new AU policy framework on military outsourcing, the typology matrix utilised by Avant¹⁷ (Figure 5) proves of significant importance, as it also touches on the area of policing and the role of some private actors in this field - an area that is often of relevance in the context of post-conflict reconstruction.

Figure 5: Contracts in the battle space (Avant)



The key difference in allowing considerable levels of outsourcing in an AU context is that weaker states and fragile democracies are likely to face a myriad of complexities in navigating these private sector waters, as Avant points out:

A fundamental variable in my analysis is the varying capacities of states. Strong states that are coherent, capable, and legitimate to begin with are best able to manage the risks of privatisation and harness the PSCs to produce new public goods, but they also have the most to lose if privatisation tips the ledger and undermines the capacities of public forces or legitimacy of foreign policy. Weak states with ineffective and corrupt forces potentially have the most to gain (or the least to lose) from privatisation, but also are the least able to manage private forces for public good – efforts to harness the private sector for state building in weak states are often desperate gambles.

In the wake of a slow winding down of the Iraq boom in private security and private military services, private actors will in all likelihood vigorously explore new markets. Concomitantly, the prospects of doing business in Africa will loom large. However, even though contributions can be made by the private sector, especially in terms of logistical support, the CADSP is in dire need of a proactive protocol on military outsourcing before the new markets for these private actors prove overwhelming in regulatory terms.

Given that the democratic oversight of militaries in Africa is a vital ingredient for the sustainable delivery of human security it is imperative that any involvement or consideration of the involvement of the private sector in AU peace missions, as well as broadly within the peace and security architecture of the continent, is taken in the context of a clear policy framework that can be subjected to critical management by the AU PSC and, at the same time, the core parliamentary oversight by both the Pan-African Parliament, as well as respective national legislatures of AU member states.

VI. Conclusion

The issue of the private sector may very well be summed up in Shameen's (2006) words:

The public has often heard that the private operators are a reality of our times and that banning their operations, either by the UN or domestically, will serve no purpose in the current discursive environment of international and domestic conflict. However, until operators themselves take responsibility for their own codes and compliance mechanisms, for example by self-regulation in accordance with some internationally acceptable principles, the legitimacy of many of their operations will continue to cause problems for the international community, and directly or indirectly, for the operators themselves.¹⁸

Notes

- 1 For instance, the OAU Co-ordinating Committee for the Liberation of Africa (OCCLA) and the Front Line States (FLS) received diplomatic support from the UN.
- 2 Adedeji, E. Private Actors and the Governance of Security in West Africa: Beyond Corporatisation, draft ISS Paper, Pretoria (yet to be published).
- 3 Singer, P 2004. War, Profits and the Vacuum of Law. Privatized Military Firms and International Law, Columbia Journal of Transnational Law, 42.
- 4 Roberts, A 2006. The Wonga Coup. London: Profile Books.
- 5 OAU Convention for the Elimination of Mercenarism in Africa, 1977.
- 6 Aning, E K, Addo, P, Birikorang, E and Sowatey, E 2004. African Commitments to Conflict Prevention and Peacekeeping: A review of eight NEPAD countries. AHSI Paper 5, August 2004.
- 7 Avant, D 2005. The Market for Force. Cambridge: Cambridge University Press, p. 162.
- 8 See the President's State of the Nation Address, February 2005.
- 9 Kwok, J. Spring 2006. Armed Entrepreneurs – Private Military Companies in Iraq. Harvard International Review.
- 10 See statement by M. Lekota, South African Minister of Defence, introducing the Bill in South Africa's National Assembly in August 2005.
- 11 See statement by M. Lekota, South African Minister of Defence, statement before the South African National Assembly during debate on the Bill.
- 12 Lekota, op cit.
- 13 Lekota, op cit.

- 14 See statement by M. Lekota, South African Minister of Defence, statement to the Joint Standing Committee on Defence.
- 15 Aning, E K, Addo, P, Birikorang, E and Sowatey, E, op cit.
- 16 Avant, op cit.
- 17 Ibid.
- 18 Dr. Shameen, S Second Quarter 2006. Conflict and Security Issues in the Modern Age: Implications for Peace, IPOA Quarterly.