



CONTENTS OF THIS ISSUE

Early Warning Issues for August	1	Emerging Security Threats in the Nile Basin	11
Country Analysis: Kenya's Constitutional Referendum	2	Country Analysis: Guinea	14
PSC Retrospective - PSC and UNSC	6	PSC Retrospective – PSC and CSOs	19
Post-Election Analysis: Somaliland	8	ICC Review Conference	21
		Important Forthcoming Dates	23

This report is available on the ISS website and can be viewed together with Thematic Reports on the work of the PSC at www.issafrica.org. All documents referred to in this Report can also be found on the ISS website.

Peace and Security Council Protocol

'The PSC shall encourage non-governmental organizations to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required such organizations may be invited to address the Peace and Security Council' – Article 20 of the Protocol Relating to the Establishment of the PSC of the African Union

Early Warning Issues for August

The scheduled Rotating Chair of the African Union (AU) Peace and Security Council (PSC) for the month of August is Djibouti. In the absence of a country's representation at ambassadorial level, an alternate member will chair the Council for the month.

Kenya's Constitutional Referendum:

On 4 August 2010 Kenyans will once again vote in a constitutional referendum. The post-election crisis of 2007 and 2008 in Kenya, revived the constitution-making process based on a stipulation in the National Accord and Reconciliation Agreement, of 28 February 2008, which called for the drafting of a new constitution within a two year period. Despite a lot of progressive provisions, some aspects of the Draft Constitution have attracted

opposition from certain sections of the public. The fault lines between the 'Yes' camp and the 'No' camp are linked to these contentious issues.

Nile Basin Insecurity:

The Nile River has gained prominence as a major factor that defines the peace and security situation of the Greater Horn and North-Eastern Africa. Following the division between the dominant lower riparian countries, namely Egypt, Sudan and the remaining seven riparian countries, over the signing of a new Nile Cooperative Framework Agreement (CFA) in May 2010, tensions between the countries of the region (involving a war of words) have not only risen, but the potential for conflict over the Nile Waters has also increased.

Guinea:

The 27 June 2010 presidential elections in Guinea won

international praise for avoiding violence and raised the hopes of many for ending military rule in the West African state; a country that had never experienced democracy since its independence in 1958. However, following the release of the preliminary results of the first round poll there were demonstrations in the capital, Conakry, and other parts of the country. On 5 July 2010, Guinean security forces clashed with demonstrators and fired teargas at thousands of people, most of them women, who took to the streets in defiance of Interim Prime Minister Jean-Marie Dore's ban on protests against election fraud. The election demonstrated that Guinea remains a deeply divided nation along ethnic lines in that votes showed that the leading candidates received almost all of their support from their respective ethnic groups and geographical regions.

Livingstone Formula

"Civil Society Organizations may provide technical support to the African Union by undertaking early warning reporting, and situation analysis which feeds information into the decision-making process of the PSC" – **PSC/PR/(CLX)**, 5 December 2008, Conclusions of a Retreat of the PSC on a mechanism of interaction between the Council and CSOs. *This Report is an independent publication of the Institute for Security Studies.*

Kenya

Kenya's Constitutional Referendum

On 4 August 2010 Kenyans will once again vote in a constitutional referendum. The last constitutional referendum in the country resulted in 57 percent of those who participated in the referendum voting against the draft constitution. The post-election crisis of 2007 and 2008 in Kenya, revived the constitution-making process based on a stipulation in the National Accord and Reconciliation Agreement, of 28 February 2008, which called for the drafting of a new constitution within a two year period.

When the 2007 presidential and general elections were convened Kenya had not yet recovered from the divisions that emerged during the failed constitution-making process in 2005. The elections were also held within the framework of the constitution bequeathed to the country following British colonial rule. The swearing in of the incumbent, President Mwai Kibaki, amid allegations of election irregularities, triggered wide spread violence in a country that had until then been regarded as a beacon of stability and democracy in a troubled region. The violence led to the death of about 1300 people and the displacement of more than half a million Kenyans.

Following successful mediation by the Panel of Eminent Personalities, led by former UN S-G Kofi Annan under the auspices of the AU, the cessation of violence after the signing of the National Accord and Reconciliation Agreement laid the foundation for the establishment of the Grand Coalition Government of Kenya.

The Constitution-Making Process

The constitution-making process resumed with the enactment of the Constitution of Kenya Review Act of December 2008. The Act stipulates that the process must proceed in three stages culminating in a constitutional referendum. The first stage involves the identification of contentious issues and a consultation process which would invite submissions from the public, as well as the preparation of a draft constitution by a Committee of Experts (CoE).

The CoE was required to finalise this process within twelve months. On 17 November 2009, the CoE published the Harmonised Draft Constitution of Kenya for additional public commentary. In January 2010, the Committee completed the revision of the Harmonized Draft Constitution based on comments from the public. Over one million people reportedly submitted views to the CoE for inclusion in the draft.

The second stage involved the consideration of the draft by the Kenyan Parliamentary Select Committee (PSC), which aimed at achieving political consensus within the coalition government over a draft constitution. In April 2010, the PSC announced that a political compromise had been reached between the two parties in the National Unity Government. The PSC submitted the revisions, agreed upon between the political parties, to the CoE for incorporation into the Harmonised Draft. The CoE subsequently re-sent the Harmonised Draft to the PSC for the wider consideration of the Kenyan Parliament.

The CoE declined to incorporate all of the revisions proposed by the PSC such as, for example, the recommendations on the powers of the Senate. The subsequent deliberations in the Kenyan Parliament were acrimonious. Ultimately, none of the proposed

amendments received the required number of MPs' votes because the threshold for securing an amendment in terms of the number of votes was significantly elevated. Consequently, the Harmonised Draft Constitution proposed by the Committee of Experts left the parliamentary deliberation phase without any alterations.

The third stage required the Draft Constitution to be submitted to the Kenyan Attorney General, Amos Wako, for publication. During this process it emerged that unauthorised alterations had been made to the Draft Constitution to the effect that reasons of 'national security' were a viable basis for limiting the Bill of Rights. On 6 May 2010, the Attorney General published the Final Draft Constitution. This set the scene for a constitutional referendum to determine whether the Kenyan population would accept or reject the Draft Constitution.

The Context of the Constitutional Review Process

The review of the Kenyan constitution became necessary in order to address issues that had previously hampered the political and socio-economic transformation of Kenya; issues that have been associated with perceived gaps or flaws in the current constitution. Political and economic mismanagement of the country and the absence of discernable respect for the rule of law have become evident in the abuse of public office and are among those issues that have brought about the need for a new constitutional dispensation in Kenya. In addition, since Kenya's independence in 1963 the independence of state institutions, including the judiciary and security sector, has perpetuated a culture of impunity. Failure to ensure the equitable distribution of resources has impoverished the majority of the Kenyan population and fostered historical injustices, including

>>page 3

The current constitution concentrates an inordinate amount of power in the presidency, which has been dubbed an ‘imperial presidency’. The absence of an effective checks-and-balance system has given Kenya’s three post-colonial presidents the license to perpetuate political exclusion and the marginalisation of certain ethnic groups and regions. Consequently, political and economic accountability in the country has been severely eroded over time.

The Draft Constitution

In terms of constitutional design, areas of particular importance include those provisions of the Draft Constitution dealing with elections, state institutions, the judiciary, the legislature, the executive, and the devolution of power. While the Draft Constitution has not fundamentally changed Kenya's electoral system, it has introduced a Party List Proportional Representation system for the allocation of certain seats in parliament.

Although the original proposal of the Committee of Experts included a parliamentary system of government, which ignited an intensive debate in the country, the final draft reflects that continuity took precedence over change with respect to the system of government. However, the power of the President has been limited in the Draft Constitution. The President cannot hold any other public office, which means that he or she cannot also be a Member of Parliament. Although the President has the power to nominate candidates for public offices, nominees will only be appointed to such offices after approval by Parliament.

entrenching the *Khadi* court system which upholds *Sharia* law.

In departing from the centralised system of the past, the Draft Constitution also proposes the devolution of the governmental structures of the state. The idea is not only to institutionalise a vertical division of power by creating another layer of authority in addition to the central government, but also to promote and thereby enhance the decentralisation of power and resources as well as establish checks-and-balances. Accordingly, in addition to the central government the Draft Constitution also introduces county governments. Reinforcing this federal element of the state structure, the constitution requires that the position of county governor be filled by popular election.

The Draft Constitution also addresses the problematic issue of land. As Kenya's history has demonstrated, land issues have always generated the greatest degree of tension and violence. There are still a host of land related grievances. The Draft Constitution calls for investigations into present and historical land injustices and the development of proposals for redressing them.

The Draft Constitution also has a chapter on the Bill of Rights. The Bill of Rights contains not only the traditional civil and political rights, but it also guarantees socio-economic rights. Apart from guaranteeing a diverse catalogue of rights, the Draft Constitution also institutionalises a robust system for the implementation and enforcement of the Bill of Rights, including thorough judicial review.

Contentious issues

Despite a lot of progressive provisions, some aspects of the Draft Constitution have attracted opposition from certain sections of

>>page 4

The issues that attracted fierce opposition from those in the 'No' camp are the provisions relating to abortion and the *Kadhi* courts. The incorporation into the constitution of the provision that legalises abortion in cases where the life of the mother is endangered, prompted church leaders and conservatives to mobilise opposition against the constitution. Groups in the 'No' camp argued that this provision amounted to legalising abortion on demand. Some indicated that there were external actors involved in the debate on abortion who were providing support, including financial support, to those opposing the constitution's abortion clause.

There is also dissatisfaction on the part of certain sections of the Kenyan society, particularly minority ethnic groups who have called for a greater devolution of power to regions. Those who benefited from the previous system, in accessing and controlling land, have also expressed concern over some of the provisions of the Draft Constitution relating to land. Therefore, they are campaigning under the auspices of

The leaders of the two parties in the coalition government, President Kibaki and Prime Minister Raila, represent the 'Yes' camp. Other leading figures in the 'Yes' camp include Vice President Kalonzo Musyoka, Deputy Prime Ministers Uhuru Kenyatta and Musalia Mudavadi, as well as the National Rainbow Coalition (Narc-Kenya) leader Martha Karua and Internal Security Minister George Saitoti. The camp enjoys support among members of civil society including the Central Organisation of Trade Unions (COTU).

In a poll conducted in May 2010, involving 6,017 people, the 'Yes' camp was ahead with 57%. Despite this lead, some of the leading figures in the 'Yes' camp are expected to lose their parliamentary seats if the proposed Draft Constitution is approved in the referendum. They have therefore shown ambivalence about supporting the Draft Constitution and are said to be campaigning half-heartedly, earning themselves in the process the nickname, 'watermelons' – green on the outside and red on the inside.

The immediate challenge facing Kenya is the potential for the repeat of the 2005 debacle and the eruption of another cycle of violence similar to the events of 2007. The country seems to be extremely polarised between those who support the draft constitution

Apart from the potential for a repeat of 2005, given the highly charged environment that has emerged in the campaigning process, another and related challenge is the risk of violence that may take place both before and after the constitutional referendum. The bomb blast that happened during a rally organised by church leaders opposed to the

>>page 5

Draft Constitution heightened these fears. Six people were killed and more than 100 injured by the blast and the stampede that followed. Almost a month after the incident, no arrests have been made. As a result, mistrust and suspicion prevail in the country.

If the above developments are anything to go by, it is not certain that the referendum will be free of violence, although it would be unlikely to occur on the scale of 2008. If violence should take place, it would be more likely to take place in those areas where disputes over land have not yet been resolved.

Clearly, while having a just and effective constitution is important, constitutional change, of itself, cannot be expected to serve as a panacea for all of Kenya's social and political woes. As a prominent Kenyan constitutional scholar observed, the constitution does not have arms and legs of its own to be able to transform Kenya. For the constitution to effect the required changes, it needs much more than a re-design of institutions and the restructuring and exercise of political power. It also requires, equally if not more importantly, a culture of constitutionalism to be implanted in the psyche of the Kenyan people, including its leaders; a culture of respecting the rule of law and abiding by the dictates of the constitution and its values.

Optimism about the outcome of the constitutional referendum should therefore be cautious. It is necessary to adopt a wait and see policy in order to assess how events will ultimately unfold, not only in terms of the constitutional referendum but also in the run up to, and during, the 2012 elections.

In the lead up to the 2012 elections, the AU, through its supporting institutions such as the Panel of the Wise, may also initiate a process promoting peaceful electoral processes free from hate speech and incitement to violence.

In its contribution to the Report of the UN Secretary-General on relations between the United Nations and regional organisations, in particular the African Union, in the maintenance of international peace and security, **PSC/PR/2(XCVII)**, which it adopted at its 9th meeting held on 23 November 2007, the PSC recommended convening 'joint meetings between the AU PSC and the UN Security Council (UNSC) at least once a year, alternatively in Addis Ababa and New York.' The two bodies have been holding their annual consultative meeting since 2007 alternatively at their respective Headquarters.

UNSC and PSC statements and previous meetings

In the context of the establishment of the AU, with strong mandates and structures on peace and security in Africa, and the increasing recognition by the UN of the role of regional

organizations in the maintenance of peace and security, the AU PSC and the UNSC showed strong interest in forging deeper collaboration within the framework of Chapter VIII of the UN Charter.

Similarly the AU PSC has also issued various statements on forging a more systematic collaboration with the UNSC. These include the AU Assembly Decision of January 2007 Assembly/AU/Dec.145 (VIII) the 23 November 2007 document adopted by the PSC on the PSC's contribution to the Report of the UN Secretary-General, referred to above, **PSC/PR/2(XCVII)**, and its communiqué of March 2009, **PSC/PR/Comm(CLXXVIII)**. Through these actions, the PSC expressed the need for enhancing relations between itself and the UNSC on peace and security matters in Africa.

Areas of collaboration that have emerged from pronouncements by the two bodies include the operationalisation of the African Peace and Security Architecture (APSA), including capacity building;

regular consultations and exchange of information; coordination of joint fact-finding missions; coordination of mediation efforts; the planning, design and implementation of peacekeeping operations; and joint consultations in the preparation of decisions pertaining to peace and security in Africa. So far the two bodies have been collaborating and sharing responsibilities regarding events in Sudan, Somalia and Burundi. Based on the outcome of the 2005 Summit of the General Assembly, the UN-AU Ten Year Capacity-Building Program has been agreed between the two bodies and is in the process of implementation.

The two bodies started an annual consultative meeting in 2007. The first such meeting was held in June 2007 at the Headquarters of the AU in Addis Ababa as part of the UNSC's field trip to selected African countries. Prominent issues discussed at this meeting were the field visits of the UNSC, the relations between the two bodies, and, more specifically, the conflict in Darfur and the establishment of the joint AU-UN hybrid operation in Darfur.

The second meeting was held at the UN headquarters in New York in September 2008. Within the framework of establishing a stronger working relationship, the main agenda points for their meeting included the issue of identifying predictable, sustainable and flexible funding for AU led peace operations and enhancing AU capacities for mediation as well as sharing information on conflict situations.

In the previous meeting held in June 2009, the two bodies spent a lot of time debating the nature of their relationship and the

>>page 7

PSC RETROSPECTIVE: The Annual Consultative Meeting of the PSC and the UNSC (continued)

intended format of their meetings. While the PSC envisaged a formal meeting, some members of the UNSC insisted that meetings should be informal. On more substantive issues, members of the PSC were interested in discussing the AU-UN Panel on Modalities for UN Support to AU Peacekeeping Operations, otherwise known as the Prodi Report. However, pending the report of the UNSG on the report, the two only agreed to consider the issue at some later date. Other issues discussed included improving their effectiveness in regard to peace efforts and improved coordination. They also agreed to strengthen relations between their respective relevant structures and to hold joint meetings on an annual basis.

There are outstanding issues and some points of disagreement between the two bodies. The question of the nature of the relationship between the two bodies has yet to be agreed. Consequently, it maybe mutually beneficial to consider establishing a formal framework of collaboration by signing a formal memorandum of understanding. The question of the nature or format of their annual consultations can also be addressed in such a document.

The relations between the two bodies have also come under strain due to differences over approaches to some conflict situations in Africa. The most notable case was the question of the ICC's role in relation to the conflict in Darfur. The PSC has expressed dissatisfaction over the UNSC's failure to respond to its call for the latter's intervention, a failure that has been seen as an indication that the UNSC does not take the PSC seriously. Another

area where the two bodies differ is over Somalia, particularly the deployment of a UN Mission taking over or replacing AMISOM.

The 9 July 2010 Meeting

At the meeting in New York, the two sides discussed both the strengthening of their relations and specific conflict situations. The meeting lasted for three hours which is insufficient time to discuss issues in any substantial depth.

Fortunately, both parties managed to avoid repeating the difficulties of the previous year, concerning procedures, format or nature of the meeting. Libya, took the lead on behalf of the PSC by referring to the difficulties encountered in Addis Ababa and urging more regular consultations in future with more time made available for discussions.

Concerning substantive agenda points relating to peace and security issues, Burundi, Côte d'Ivoire and proposed joint missions to the Sudan were originally intended for discussion. However, ultimately, neither Burundi nor Cote d'Ivoire was discussed whereas the possibility of joint missions to Sudan was declined because of reservations on the part of some members of the UNSC who expressed the need for careful study of the matter, despite continuing challenges faced by the Joint AU-UN Hybrid Mission in Darfur (UNAMID). Nonetheless the two sides agreed 'to further consider collaborative field missions on a case by case basis, and, as appropriate, in respect of selected peacekeeping operations to enhance synergy in monitoring, assessment of results and response strategies.'

The meeting effectively focused on three themes. The first theme was about ways and means to strengthen cooperation between the UNSC and the AU PSC including modalities for organising future consultations. Ultimately it was agreed that annual consultative meetings would be convened no later than June of each year, that the chair person hosting the meeting would also prepare the agenda in consultation with the leadership of the other party and that the final agenda would be agreed to in advance, that it would be focused and would also allow for follow-up of issues previously discussed.

The second theme addressed the question of strengthening and enhancing cooperation between the two organisations in areas of conflict prevention and resolution. In this regard, Burundi spoke about the challenges of unconstitutional changes of government and related efforts made by the AU whereas Mali spoke about the Prodi Report, developing better official channels, creating better communications and improving relationship between the two peacekeeping systems. Representing the UNSC, the UK highlighted the importance of cooperation between the UNSC and the AU PSC, whereas Japan highlighted conflict prevention as an important area and expressed support for enhancing the AU's peace and security capabilities. Citing MINURCAT as an example, the challenge faced by the UN, with some African countries hosting UN peacekeeping operations, was also raised. The two sides agreed on the need to support the operationalisation of the APSA and affirmed their continued commitment in support of the UN-AU Ten-year Capacity Building Programme.

>>page 8

PSC RETROSPECTIVE: The Annual Consultative Meeting of the PSC and the UNSC (continued)

With respect to the Prodi Report, although there was no concrete outcome regarding the way forward concerning the recommendations, the two sides went only as far as expressing their recognition of the need for predictability, sustainability and flexibility in terms of financing the AU's peace and security capability. Clearly, the UNSC is not yet ready and has not yet achieved consensus on how to go about the recommendations of the Prodi Report and the subsequent report of the Secretary-General about the Prodi recommendations. Some members are concerned over issues such as using assessed contributions for AU operations and command and control.

As far as formalising the relationship between the two bodies is concerned and taking it to the next level, no major breakthrough emerged from the New York meeting. There is strong interest by the AU in enhancing its relationship with the UNSC, including a more substantial role in decisions by the UNSC on African peace and security issues. However, the UNSC seems reluctant to take such a step and seems determined to prevent encroachment by the AU into areas it perceives as its exclusive domain. The UNSC

emphasis is therefore on keeping the relationship as informal as possible and on treating the AU as a subordinate multilateral entity rather than a co-equal in certain areas, including African issues.

The third theme involved consideration of specific issues, particularly the situation in Sudan and peace and security issues in the Horn of Africa such as Eritrea-Djibouti and the conflict in Somalia. South Africa presented a briefing on the situation in the Sudan, mediation efforts and the work of the Mbeki Panel. On Somalia, Rwanda spoke about the need for supporting the Transitional Federal Government (TFG) and deploying an additional 2000 troops to meet the force strength of AMISOM. Representatives from Kenya and Djibouti also spoke about Somaliland.

The two parties agreed on the need to coordinate and work together to achieve peace and security in these countries and in the region as a whole. On Sudan, they recognized the role of the Mbeki Panel and the need for close coordination between the two bodies. The two also emphasised the importance of the full implementation of the CPA, the need for civilian protection and the urgent need to secure a stable and durable peace in Darfur.

While expressing concern over continuing insecurity in Somalia, the two stressed the importance of supporting AMISOM and the TFG. The two parties welcomed the decision of IGAD Heads of State and Government to deploy forces to increase AMISOM's troops to the mandated force level of 8100. The two sides also noted developments regarding the border conflict between Eritrea and Djibouti and welcomed the mediation efforts by the Emir of Qatar for the peaceful settlement of the conflict.

Although no dramatic breakthrough emerged from the latest meeting, there have been some notable improvements when compared with previous encounters. For example, time-consuming organisational details, that have now been agreed upon, should no longer hinder or distract attempts by both bodies to engage in focused debate and discussion about more substantive issues in future.

The next consultative meeting will take place during the first half of 2011 at the Headquarters of the AU in Addis Ababa, Ethiopia.

POST-ELECTION ANALYSIS

Somaliland

On 26 June 2010, Somaliland successfully held an exemplary presidential election. The election date, which was decreed by President Dahir Riyale Kahin on 15 May 2010, upon recommendation by the Electoral Commission,

coincided with the 50th anniversary of the independence of Somaliland from British colonial rule.

Somaliland unilaterally declared its independence in 1991. Since then not only has it established functioning state institutions but it has also instituted significant

democratic processes. In stark contrast to violent South-Central Somalia, Somaliland achieved a better and more fair self-administration process, with very little external assistance and under considerable pressure in the face of a refusal by the international

>>page 9

community to accord it legal recognition.

Following some years of institution building and consolidation, Somaliland held a constitutional referendum in 2001. The constitution, which was approved by 97 percent of the electorate, provided for an executive consisting of a directly elected president and vice president and appointed ministers; a bicameral legislature comprising an elected House of Representatives and an upper house, called the *Guurti*, composed of traditional elders; and an independent judiciary. Under the new constitution, Somaliland conducted three elections, local, presidential and parliamentary, between 2002 and 2005.

Although Somaliland lacks the *de jure* status of a sovereign state that other countries of the region possess, it has achieved relative peace and security and made excellent progress in building and running effective state institution despite some difficulties encountered in its democratisation process. With the successful conclusion of the June 26 elections, Somaliland not only consolidated the institutionalisation of its democratic processes, but also created a climate of peace and security. It also set an impressive example for a region in which free and fair elections have tended to be rare.

The run-up to the election

The June 26 presidential elections were held against the background of a difficult two year period during which the original schedule for holding the elections in 2008 was delayed more than six times. Various factors, including the instability on the border with

Puntland and subsequent errors in the voter registration process, accounted for these delays and the spectre of an imminent political crisis that hovered over Somaliland. A breakthrough came after an agreement was reached between Somaliland's three political parties, following mediation efforts by Ethiopia and technical and financial assistance from the EU and US.

In April, consensus was reached on holding the elections in June 2010. Following the completion of the voter registration list of just over a million voters, and the subsequent correction of many errors in the list, such as double registration, accomplished with the technical assistance of a British-based consultancy, the Electoral Commission was able to schedule elections for June 2010. On 10 May, registration cards, that would also serve as national identification cards, arrived in the country for distribution to voters. Following a recommendation by the Electoral Commission on 14 May to hold the elections on the occasion of the 50th anniversary of Somaliland's independence, the President issued a decree the next day setting aside 26 June 2010 for voting to take place.

A three week campaigning period was set aside. In order to avoid violence between supporters of the three candidates, their respective political parties were each allotted seven specific days to conduct their campaigning activities. Despite threats from Islamist insurgents in South Central Somalia, the parties conducted campaigns that were frantically energetic and largely peaceful.

The candidates contending for the Somaliland presidency were the same three candidates who competed in the 2003 presidential elections: the incumbent, President

Dahir Riyale Kahin, hailing from the smaller *Gadabursi* clan and representing the United Democratic People's Party (UDUB) which was established by the late President Mohamed Ibrahim Egal; Mr. Ahmed Mohamed Silanyo from the Unity Party, known as *Kulmiye*, which was established in 2002 and had won the largest number of seats in the 2005 parliamentary elections (in 2003, Mr. Silanyo had lost the presidential elections by only 80 votes); and Mr. Faisal Ali Warabe of the Justice and Welfare Party (UCID).

Voting process and post-election

On Election Day, Somalilanders turned out in large numbers. In fact, sources in Somaliland reported that some voters arrived at polling stations as early as 3 in the morning. Undeterred by the threats of South-Central Somalia's Islamist groups, who claimed responsibility for the 2008 bombings in Somaliland, and the isolated violence in the regions of *Sool* and eastern *Sanaag*, actions attributed to and acknowledged by the semi-autonomous entity of Puntland, voters cast their ballots peacefully at many stations throughout the country, after waiting many hours in long lines for the opportunity to vote.

Apart from the attacks that undermined the elections in *Sool* and *Sanaag* and some of the irregularities encountered, the elections were conducted free from violence and without major logistical and administrative difficulties such as those encountered during Sudan's April elections.

Election results were announced on 1 July. According to the

>>page 10

POST-ELECTION ANALYSIS (continued)

National Electoral Commission, Mr. Silanyo, who had so narrowly lost the 2003 election to the incumbent, won 49.59 percent of the total votes while President Riyale obtained 33.23 percent, followed by Mr. Warabe in third place, who drew 17.18 percent of the votes cast.

In an action symbolic of the consolidation of the democratic process in Somaliland, the incumbent accepted his defeat without rancour or complaint. He not only announced that he would handover power peacefully before the expiry of his mandate on 26 July, but also congratulated the President elect and his party for winning the elections. On his part, Mr Silanyo praised the incumbent for his services to Somaliland and for the successful organisation of democratic elections as well as for conceding defeat. He also announced the establishment of a committee from various political groupings and other sections of society to help him constitute 'a consensus government'.

Mr. Silanyo studied economics in the United Kingdom and served as a minister in the government of the former Somali president, Mohamed Siad Barre. He also served in previous Somaliland administrations. The new President hails from the *Habar Jeelo*, one of three major subclans of the *Isaaq* clan which constitutes the majority of Somaliland's population. Mr. Silanyo is a political veteran and iconic politician who was the longest serving leader of the Somali National Movement. The Somali National Movement was instrumental in the overthrow of Barre's brutal government and the eventual declaration of Somaliland's independence.

Silanyo's Unity Party is said to be dominated by former fighters of

the Somali National Movement. The party has also reportedly co-opted a group of Islamists into its ranks. Following the successful conclusion of the elections, a critical unknown for the future of Somaliland is whether or not these two factions will be able to cooperate and collaborate politically, thus avoiding a future backlash. This must be a major source of concern in the longer term especially considering that Mr. Silanyo is nearly 80 years old, a compelling indicator that the older generation of politicians still retains considerable influence over Somaliland politics.

Mr. Silanyo's electoral victory was made easier partly because the opposition United Democratic People's Party (UDUB) was politically undercut by the population's growing unease with its administrative style over the last seven years. UDUB was heavily criticised for rampant corruption at the highest level, for its increasingly authoritarian practices and for the unflattering reputations of officials surrounding the president. The people had also grown impatient with the recurring postponements of the election date and extensions of the mandate of President Riyale by the *Guurti*, the non-elected upper House of Elders. Accordingly, the much-maligned UDUB's support base slowly, but surely, eroded with many realignments and defections by prominent UDUB figures taking place long before Election Day.

For Somaliland, it was the first time that an incumbent president defended his term in office through a re-election campaign. It was also the first time that an orderly transition of power from one political party to another had occurred as a result of multiparty elections. Even international observers gave a positive assessment of the elections. They certified that the elections generally met international standards, some

of them actually describing the elections as free and fair despite sporadic irregularities such as underage voting and active campaigning by government employees on behalf of President Riyale.

Although the role of the leaders who participated in the elections was of crucial importance for the smooth conclusion of a very successful and exemplary election, the people of Somaliland also deserve to be commended. The fact that the voting process went off peacefully shows their commitment toward a condition of sustainable peace. The fact that they went to polling stations in large numbers to cast their votes, undeterred by the threats of Al Shabab to disrupt the voting process, is a clear indication of their dedication and commitment to Somaliland's democratic process.

These elections have demonstrated to the international community that advances continue to outpace setbacks in Somaliland, This situation is in direct contrast to conditions in South-Central Somalia, where the second version of the Transitional Federal Government cannot even control Mogadishu, despite the presence of African Union peacekeepers, and still has much to do before it can even hope to establish viable institutions and hold credible elections. Somaliland's elections will certainly not ensure outright international diplomatic recognition, but they may successfully enhance Somaliland's image and prove to the rather indifferent international community, clearly obsessed with South-Central Somalia, that Somaliland has the capacity to play a potentially key strategic role in the Horn of Africa.

>>page 11

POST-ELECTION ANALYSIS (continued)

Somaliland could act as a bulwark against the threat of international terrorism spearheaded by *Al Shabab* whose top leaders significantly include Somalilanders such as Ibrahim Al-Afghani and Ahmed Abdi Godane. Moreover, Somaliland could also help contain the threat of piracy in the Gulf of Aden and the Indian Ocean.

According to well-informed regional sources, three factors contributed primarily to the peaceful conduct of elections and consequent stability in Somaliland. The first factor is that a functional National Electoral Commission (NEC) succeeded in winning the trust of most stakeholders, even establishing a beneficial relationship with Somaliland's civil society. The NEC trained its staff well and made relatively effective logistical and security preparations, including most notably the establishment of a new and more secure voter registration system.

The second factor is that Somaliland's military establishment, especially its high command, continuously maintained a neutral political role and deliberately avoided supporting any of the contesting political parties. It has also firmly established a reputation as a disciplined and responsible military organization, better structured and better-paid than

any of the armed groups operating in other parts of Somalia.

The third factor contributing to Somaliland's peaceful election process is that senior traditional leaders kept on resolving political problems and impasses which potentially and effectively could have threatened the relative peace for which the people of somaliland had fought so hard.

Beyond the ballots

The process of institution building and democratisation in Somaliland is not immune challenges. It is vulnerable to setbacks not only from internal or domestic issues and actors, but also and most importantly, from the violence and extremism that has engulfed South Central Somalia. The continued refusal of the international community to accord Somaliland the status of sovereign statehood also seriously limits the capacity of its government. Given the resilience and the resolve that Somalilanders have shown, for close to two decades, for establishing functioning institutions and for building a democratic system of governance, it is imperative to make sure that their thriving peace and democratic process is not undermined by international apathy.

The AU Commission, the PSC and other members of the international community should not only acknowledge the progress

being achieved in Somaliland, but also extend the necessary support Somaliland deserves in order to sustain progress in that country. Somaliland's considerable achievement should not pass without due recognition, including diplomatic recognition, and accompanying support for constitutional development and nation-building initiatives. The PSC should therefore consider recommending the application of a Post Conflict Reconstruction and Development (PCRD) initiative to Somaliland and its inclusion for consideration by the UN Peace-building Commission.

Ultimately, AU member states need to consider taking the lead in the debate on the overdue diplomatic recognition of Somaliland, by seriously considering the recommendations of the 2005 AU Fact-Finding Mission to Somaliland. The AU is in a position to develop various options to facilitate Somaliland's international recognition and to this end might consider requesting the AU Commission to initiate an in-depth study on best options for the future of Somaliland.

References

Berouk Mesfin, *The Political Development of Somaliland and its Conflict with Puntland*, ISS Paper No.200, 2009.

Emerging Regional Security Threats in the Nile Basin

During the course of the past few years, many have acknowledged the increasingly close interface between climate change, trans-boundary resources and regional security. In North-Eastern Africa, the most crucially important

shared resource is arguably the Nile River. Although the Nile River has always defined the peace and security dynamics of the region, due to climate change and changes in the socio-economic situation of the countries of the region, it has in

recent years acquired particular prominence as a major factor that defines the peace and security situation of the Greater Horn and North-Eastern Africa.

>>page 12

Emerging Regional Security Threats in the Nile Basin (continued)

Following the division between the dominant lower riparian countries, namely Egypt, Sudan and the remaining seven riparian states, over the signing of a new Nile Cooperative Framework Agreement (CFA) in May 2010, tensions between the countries of the region (involving a war of words) have not only risen, but the potential for conflict over the Nile Waters has also increased. It was also, in this context, that predictions about water wars flooded the news, relevant literature and policy statements. There is no indication that the countries of the region have reached a point where they might wage direct war between themselves. However, given historical precedent, there is reasonable concern that rising tensions could complicate the peace and security situation in the region with strong potential for increased proxy wars or conflicts.

In the context of the increasing need to deal with trans-boundary water development and interstate security concerns as related issues, and the role of the AU PSC in conflict prevention, the PSC may need to take immediate preventive steps. In the long term, it may also need to develop mechanisms or frameworks for dealing with issues involving trans-boundary resources. There are various factors that heighten the need for achieving a sustainable and equitable trans-boundary governance regime in Africa and particularly the Nile region. These include, among others, the existence of trans-boundary rivers in almost all parts of Africa, the impact of climate change and population growth.

Almost every African country has territory in at least one trans-boundary basin. The surface areas of some fourteen African

countries fall entirely within one or more trans-boundary river basins. Africa has more than sixty trans-boundary river basins containing 93 percent of the freshwaters of the Continent. Trans-boundary basins cover 62 percent of Africa's total land area and around 77 percent of the population live in these basin areas. However, Africa's freshwater resources are distributed unevenly across the continent, a factor that makes utilisation difficult and sometimes results in constant tension and sporadic conflict.

By the year 2025 Africa's total population is expected to reach approximately 1.3 billion. According to credible studies, a country would experience water scarcity if its per capita water availability were less than 1000 cubic meters per year and would be under water stress if the availability were between 1000 and 1700 cubic meters per year. The Fourth World Water Forum report on Africa predicted that by the same year, around 25 African countries would be subject to water scarcity. The majority of African countries are already experiencing water stress. In the Nile Basin, by the year 2025, some countries, namely Ethiopia, Egypt, Sudan, Rwanda, Burundi, Kenya and Eritrea, will face water scarcity, while Uganda and Tanzania will face water stress.

Environmentally, the Nile Basin is on a knife-edge. The ecological crisis is deepening year by year. The impact of climate change, coupled with environmental problems such as deforestation, soil erosion, silting and sedimentation, is severely affecting the Nile Basin. With the rise in temperature and decline in rainfall, the volume of Nile waters is also reportedly declining. Due to climate change, countries of the region that traditionally enjoyed regular rainfall for their agriculture and consumption have in recent years experienced recurrent draught

due to erratic, declining and varied rainfalls. Consequently, there has been an increasing demand for making use of all available water resources, the Nile being a major provider for the inhabitants of the region.

For the Nile Basin, these developments are not good news for a number of reasons. The Nile River is historically volatile and politically sensitive. It also has a poor economy and a degraded environment when compared with other rivers on the African continent. The Nile Basin has the highest number of riparian systems in Africa, followed by Niger and Congo (nine riparian systems), Zambezi (eight), Volta (six) and Senegal, Ouagadougou, Limpopo and Okavango (four). It is also one of the most contentious rivers. The infamous alarmist water prediction about water shortage and resultant conflict was postulated by the then United Nations Secretary General, Mr. Boutros Boutros Ghali, an Egyptian, who said that this century's wars would be fought not over oil, but water. The above factors will thus further aggravate the volatility of Nile politics and sensitivities surrounding the future use and management of Nile water resources.

Recognising similar challenges relating to the use of such resources, Kofi Annan, the former Secretary General of the UN, advised that "Africa must govern itself better and manage its natural resources better." The starting point should focus on those frameworks that Africa has already adopted. The African Convention on the Conservation of Nature and Natural Resources, adopted by the Organisation of African Unity (OAU) in 1968, was the first collective action on

>>page 13

Emerging Regional Security Threats in the Nile Basin (continued)

water in Africa. African leaders recognised such needs for inter-country cooperation as early as the 1960s and 1970s, soon after most African countries obtained their independence. As a result, a number of cooperation mechanisms, in the form of trans-boundary River Basin Organizations (RBOs), were established on the African continent by inter-riparian countries

Some of the most important milestones in this process were the adoption of the African Water Vision, the Framework for Action and the Marrakech Declaration, as well as the Pan-African Implementation and Partnership Conference on Water in 2003 in Addis Ababa, the establishment of the African Ministers' Council on Water (AMCOW) and the creation of the African Water Facility (AWF). The 2025 African shared vision is to have: "an Africa where there is equitable and sustainable use and management of water resources for poverty alleviation (and) socio-economic development". To achieve this objective, the African Network of Basin Organisations was established in July 2002 to better manage trans-boundary rivers in Africa.

In spite of these attempts, problems with freshwater availability in Africa are further complicated by the lack of efficient basin-wide water sharing agreements and an all-inclusive river basin organisation. At the moment, with the exception of the Senegal River, African trans-boundary rivers are regulated neither by international water law nor common sense. As a result there are many predictions about potential water conflicts, particularly concerning the Nile River which poses a real or

potential threat to the peace and security of the region. Other trans-boundary rivers like the Niger, the Congo, the Zambezi, the Okavango, the Gambia, the Volta and the Orange River Basins have also not yet institutionalised workable and sustainable water regulation mechanisms.

Additionally, many of the OAU/AU documents are premised exclusively on a development and management paradigm. They have not adequately integrated the peace and security dimension of trans-boundary resources. In the context of the emerging tension over the Nile waters, it may now be time to mainstream the regulation and management of trans-boundary waters into the peace and security framework of the AU.

This report was motivated by the recent Nile water dispute after the new Nile water agreement which was signed by the five upstream riparian states, namely, Ethiopia, Kenya, Tanzania, Uganda and Rwanda, on May 14, 2010. The signing of the Nile Cooperative Framework Agreement (CFA) is open until May 13, 2011. Burundi and Democratic Republic of Congo are expected to sign the CFA, while Egypt and Sudan have clearly declined to do so. The CFA negotiations have taken more than twelve years and have passed through several gruelling and meandering phases, including the formation of a Panel of Experts, a Transitional Committee, a Negotiations Committee and joint negotiations. It was reported that agreement had been reached on the majority of the CFA articles, but the thorniest one is Article 14 (b) which states that:

"The Nile Basin States therefore agree, in a spirit of cooperation, to work together to ensure that all states

achieve and sustain water security and not to significantly affect the water security of any other Nile Basin States (proposed by the Upper riparian countries) nor to adversely affect water security and the current use and rights of any other Nile Basin States (proposed by lower riparian countries)".

This article has split the Nile Basin states into two seemingly irreconcilable major blocks, the upper Nile (Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Tanzania, Uganda, Rwanda) and lower Nile (Egypt and the Sudan). The rift is between those who support the *status quo* and those who do not. Apparently, the upstream countries are against the existing 1929 and 1959 Nile water agreements. As a result, the Nile issue has once again become a top security concern in the region.

At the risk of over-simplification, it would seem that the AU has been content to gloss over the Nile issue for far too long. The AU, as successor to the OAU, is a depository of the 1959 bilateral Nile waters agreement between Egypt and the Sudan. The AU will also deposit the 2010 new Nile CFA upon the signing of the sixth state, when either Burundi or DRC sign the agreement. The strategy the AU has been employing so far is one of non-interference in trans-boundary disputes like the Nile. It has become extremely difficult to find any past AU communiqué, press release, press statement or briefing about the on-going Nile water disputes. Of the 236 PSC meetings dating from 16 March 2004 through to July 5 2010, not a single communiqué, report or briefing was made on any Trans-boundary River.

>>page 14

Emerging Regional Security Threats in the Nile Basin (continued)

Perhaps, this is a reflection of the existence of more pressing issues that have concerned the PSC. It may also be an indication that ongoing tensions over Nile water resources have not, until recently, met the perceived minimum threshold that would be necessary to motivate the PSC to action.

At this critical juncture in Nile Basin tensions, the AU's 'non-interference' approach should perhaps be re-visited in accordance with the AU PSC protocol. Article 9 (1) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union on the 'Entry Points and Modalities for Action' states that:

"the Peace and Security Council shall take initiatives and action it deems appropriate with regard to situations of potential conflict.... The Peace and Security Council shall also take all measures that are required in order to prevent a conflict"

Within the framework of these provisions, as indicated above, the PSC may consider two related options. The first and immediate

option is to take preventive initiatives. It is important to note that the possibility of water conflict would not be completely off the table in the Nile Basin politician's mind. In this respect, the recent visible tension and war of words can be cited as an example. It is a day to day reality that the riparian states routinely place the Nile issue at the top of the national security agenda, which, in turn, makes Nile politics a regional security issue that has human security implications for more than 300 million people living in ten Nile Basin countries. Accordingly, for the PSC to consider taking preventive initiatives is within the bounds of its mandate. It should boldly mainstream the Nile River as a peace and security concern. It should also start observing Nile water negotiations, and if necessary, mediate to help riparian countries extricate themselves from the quagmire of stalemate. By so doing, the AU can show foresight and leadership. The AU's constructive mediation in Nile water controversies would help to smooth tensions between the upper and lower riparian countries and hone the Cooperative Framework Agreement's ultimate objective. Wise and timely mediation can bring a real sea change to the

way in which riparian countries, particularly Nile river states, interact with one another, now and in the future.

Considering the AU's role in relation to climate change, the Nile trans-boundary river issue should not be kept at arm's length. In fact, African water resources are primary casualties of the anticipated impact of climate change. Furthermore, given the efforts the World Bank, developed countries and donor organisations have been making, there is a need for the AU to take a lead on the issue of water shortage in Africa and resultant potential conflict. A second and long-term proposed action would thus be to develop a framework for dealing with and responding to similar situations involving disputes over trans-boundary resources. To this end, one possible solution worth considering might be to establish a Trans-boundary Desk or Focal Person in the AU, who can closely follow up recent developments concerning trans-boundary rivers and ensure that timely action is taken by the PSC to prevent, mitigate or peacefully resolve such issues in their incipient stages.

COUNTRY ANALYSIS

Republic of Guinea

Previous AU Documents and Recommendations:

At its 237th meeting, held on 21 July 2010, the PSC received a briefing from the Commissioner for Peace and Security, Ramtane Lamamra, and a presentation by the representative of the Mediator in the Guinean crisis, President Blaise Compaore, on the situation

in the Republic of Guinea. The subsequent communiqué, **PSC/PR/COMM-3(CCXXXVII)**, called the 27 June 2010 first round presidential poll a significant step toward the restoration of constitutional order and stressed the urgency for holding an early second round. The Council also welcomed the 23 July meeting in Conakry, of the International Contact Group on Guinea (ICG G) and warned that it would impose sanctions against those working to undermine Guinea's progress or who attempt to retard the country's return to constitutional order. In a statement dated 2 July 2010 the

Chairperson of the AU Commission, Jean Ping, applauded the peaceful process of the presidential vote and expressed his satisfaction with the positive assessment of the various election observation missions about the election. Ping invited all the Guinean parties to preserve the climate of peace, security and serenity so that the ambition of the Guinean public for the restoration of constitutional order and consolidation of democracy would be realised. The Chairperson further urged calmness and restraint while waiting for the announcement of

>>page 15

Since the beginning of 2009 Guinea has featured more than ten times on the agenda of the PSC. This demonstrates close monitoring by the Council of developments in the West African state following the bloodless military coup of December 2008. A month before the elections, at its 232nd meeting held on 17 June 2010, the Council received briefings from Professor Ibrahima Fall, Special Envoy of the Chairperson of the Commission to Guinea, as well as the Permanent Representatives of Burkina Faso and Nigeria in their respective capacities as representative of the Mediator and Chair of ECOWAS, on the course of events in Guinea. In a Press Release (**PSC/PR/BR.2(CCXXXII)**) that followed the meeting, the Council expressed satisfaction on the significant progress made affirming the irreversibility of the process, particularly the signing of the Constitution and the Electoral Law, by the Transitional President, General Sékouba Konaté, in accordance with the Ouagadougou joint Declaration.

On 10 July 2009, **PSC/PR/COMM(CXC VII)**, the PSC received the Report of the Chairperson of the Commission on the situation in the Republic of Guinea **PSC/PR/2(CXC VII)** and was also briefed by the Commissioner for Peace and Security, Ambassador Ramtane Lamamra, and the Special Envoy of the Chairperson of the Commission for Guinea, Ibrahima Fall. At that meeting, the PSC expressed grave concern at the lack of significant progress in the transition towards the restoration of constitutional order. On the basis of the AU Constitutive Act and the Lomé Declaration on Unconstitutional Changes of Government, of July 2000, the PSC called for the

Crisis Escalation Potential:

The June 27 presidential elections in Guinea won international praise for avoiding violence and raised the hopes of many for ending military rule in the West African state; a country that had never experienced democracy since its independence in 1958. However, following the release of the preliminary results of the first round poll there were demonstrations in the capital, Conakry, and other parts of the country. On July 5, Guinean security forces clashed with demonstrators and fired teargas at thousands of people, most of them women, who took to the streets in defiance of Interim Prime Minister Jean-Marie Doré's ban on protests against election fraud. Doubts over the credibility of the election were further raised after the Carter Center, which had observed the election, declared that there had been irregularities and that confusion in some of voting and counting procedures had negatively affected the quality of the elections. These concerns were also shared by the National Council of Civil Society Organisations (CNOSC). According to preliminary results, the run-off will be between former Prime Minister Cellou Dalein Diallo of *Union des forces démocratiques de Guinée (UFDG)* and the longtime opposition politician, Alpha Condé, of the *Rassemblement du peuple de Guinée (RPG)* party who received 40 and 20 percent of the votes respectively. The result was strongly contested by the supporters of Sidiya Touré who came in third with 15 percent of votes and therefore lost an opportunity to participate in the run-off elections. The election demonstrated that Guinea remains

deeply divided nation along ethnic lines in that votes showed that the leading candidates received almost all of their support from their respective ethnic groups and geographical regions. The promising elections were marred by strong ethnic rivalry and clashes between supporters of Condé and Touré reportedly claimed two lives.

The situation got even more complicated when the interim president, General Sékouba Konaté, who expressed disappointment and said he was 'offended' by the electoral fraud allegation and attacks on his personality, announced he would be resigning as chairman of the transition and requested the International Contact Group on Guinea (ICG-G) and the international community to appoint a new interim president.

The arrest and release, after two days, of a dozen Guinean army officers with close ties to the former coup leader, Moussa Dadis Camara, two weeks before the elections, was another manifestation of division and instability in the army that could easily promote further radicalisation and unrest. The electoral fraud allegation, the ethno-regional basis of the recent elections and possible military instability, as well as long running allegations of multi-million dollar drug trafficking in Guinea, could further exacerbate the electoral and constitutional crisis and hamper the country's transition to democracy.

Key Issues and Internal Dynamics:

The pre-election period in Guinea, a nation that has suffered so much from coups and subsequent military rule characterised by repression, mismanagement and corruption, was filled with optimism and hope. The various political parties and presidential candidates had also been urging their respective supporters and the wider public to behave in a civically responsible

>>page 16

manner that would help promote reconciliation and transcend ethnic boundaries before, during and after the poll. It was the first time that presidential election candidates had not called for an electoral boycott and the absence of an incumbent was also regarded as an opportunity to ensure free and fair elections. The election was also perceived as a great opportunity for the country to build a democratic system and to end its international isolation following the December 2008 military take-over of power following the death of the long time dictator, Lansana Conté.

Many predicted that history would repeat itself in Guinea and that the country would descend into absolute dictatorship. Since its independence from France in 1958, the country has suffered from the tragic and debilitating effects of authoritarian rule. The first post-independence president, Ahmed Sekou Touré, established an authoritarian regime and was accused by his opponents of political repression and economic mismanagement. When Sekou Touré passed away in 1984, Lansana Conté and a cadre of military officers staged a coup and seized power. The Conté government claimed that it would reverse the excesses of the previous regime; a promise that was never fulfilled.

A 32-member military junta, a group of low ranking army officers led by Captain Camara, came to power in a bloodless coup on 23 December 2008. The group which was known as the National Council for Democracy and Development or *Conseil National pour la Démocratie et le Développement (CNDD)* had initially assured the domestic population and the international community that it would reform the institutions of government and eliminate corruption. The promised quick elections and a return, by junta members, to their barracks. However, the group reversed itself claiming it needed more time to review the constitution, develop infrastructure, and improve public

morality as well as clean Guinean society of 'narcotraffickers' that had made the country a major transit point for cocaine cartels seeking new routes to Europe from the Americas. Some have accused Dadis Camara of indirectly lobbying supporters to demand that he stand for elections, thereby releasing him from his promise not to seek election.

Camara also tried to extend the calendar proposed by the international contact group and the AU PSC for organised elections and a hand-over of power by the end of 2009. However, on 28 September 2009, the massacre of more than 150 civilians who were demanding a democratic transition, became the catalyst for change. The shooting created a rift in the junta which ended in an assassination attempt against Camara, who was wounded and later withdrew from the political sphere.

General Sékouba Konaté subsequently took over the leadership of government in Guinea and changed the course of events by starting fruitful negotiations which resulted in the Ouagadougou Accord of 15 January 2010. Konaté then pledged to restore civilian rule and announced promotions for most of the army as a reward for maintaining discipline and peace during the election process. All soldiers ranked from corporal to major were immediately promoted one rank after the successful conclusion of the first round elections.

The Ouagadougou Agreement focuses on a number of elements vital for the transition to democracy and has identified the process and concept of election as a central component of such transition. Guinea held nominally democratic presidential elections in 1993, 1998, and 2003, as well as legislative elections in 2002 that were boycotted by the major political parties. The June 2010 presidential election, which only took five months to prepare, with twenty four candidates, has faced difficult logistical challenges. However, it

provided a critical opportunity both to introduce a genuinely democratic political order and also to improve electoral procedures for future elections in Guinea.

Some analysts gave Condé the best chance of winning such a presidential election because of his many years in the opposition. However, Diallo drew the most votes in the first round, due mainly to his large *Peul* ethnic support base and the political harassment he was subjected to during the reign of Dadis Camara which won him much sympathy. For Alpha Condé, who came in second to Diallo, this election could possibly be his final opportunity to come to power democratically, considering his relatively advanced age of 73 years. However for Diallo these elections are to him and his followers a platform to permit the coming to power of a *Peul* ethnic group. Guinea's *Peuls* believe they have been too often denied the opportunity to rule their country. But while a Guinean president has not yet come to power from the *Peul* ethnic group it would be wrong to argue that there has been any systematic discrimination against the *Peuls*, as they were always well represented at various echelons of power and influence within the government and the army. The *Peuls* also tend to dominate the economy of the country. During the patronage of former President Lansana Conté, the minority *Soussou* ethnic group benefited politically. However, historically, two of the largest ethnic groups in Guinea, the *Peul* and the *Malinke*, have been marginalised politically, and for some time have been positioning themselves to successfully engage in the contest for ultimate political power.

The initial election results were strongly contested by *Union des forces républicaines (UFR)* and its presidential candidate, Sidiya Touré, who achieved third place in the first round. His supporters accused the national election body and leaders

>>page 17

of the transitional government of fraud and a lack of impartiality. General Konaté reacted to these allegations by threatening to resign, saying he was 'distressed' by the 'offensive' remarks of protesters claiming widespread irregularities during Guinea's first democratic election. However, following an urgent and effective effort in preventive diplomacy by the Chairperson of the AU Commission, Jean Ping, who visited the country on 7 July 2010 together with other regional actors, Konaté was persuaded to reverse his decision. Consequently, he decided to stay in a care-taker capacity until the democratically elected president assumes office. The President of the Transitional National Council (CNT), and religious leaders and members of civil society also played a significant role in encouraging Konaté to stay.

and to assist in creating a professional military establishment. Consequently, the PSC has examined a report by the joint ECOWAS-AU-UN expert group on the proposed reform of the Guinean defence and security sectors, led by Gen. Lamine Cisse. Subsequently, the PSC requested ECOWAS, the AU and UN to develop proposals for implementing the recommendations contained in that report, in consultation with the future government-elect and interested parties.

Geo-Political, Pan-African and REC Dynamics:

the transition to democracy in Guinea in January 2010. On 7th of July 2010, the Chairperson of the AU Commission, Jean Ping, visited Conakry and played a fundamental role in persuading General Konaté to stay after he had threatened to resign following allegations of fraud. Ping congratulated the various actors in Guinea and the national election commission for the peaceful elections and urged everyone to abstain from any act that might jeopardise the consolidation of democracy in Guinea. Ping stressed the need for an SSR and pledged support to implement the relevant reform.

UN Dynamics:

>>page 18

In July 2009, the UN deployed its drug and crime prevention experts on a fact-finding mission to Guinea and launched a new initiative to combat a regional illicit cocaine trade estimated at one billion US dollars, which uses Guinea as a major conduit for the transportation of drugs to Europe. Consequently, in early August 2009, the United Nations voiced concern over evidence of extensive illicit narcotics operations in the country. According to a UNODC report released on 7 July 2009, organized crime in Guinea is pursuing the trafficking of human beings, illicit drugs, toxic waste and has also commenced a corrupt trade in mineral resources.

Guinea has been experiencing international isolation and sanctions for many months. Though the response in the lead-up to these elections was positive there was mixed international

International efforts and initiatives to force the military junta to restore constitutional order and facilitate elections was primarily coordinated and led by the International Contact Group on Guinea (ICG-G) which was set up by the AU Commission on 30 January 2009 and included members of the UNSC, AU, ECOWAS and representatives of individual states. The Group is co-chaired by the AU and ECOWAS.

Civil Society Dynamics:

de la Société Civile which observed the elections has said that there were 'attempts at fraud' in some polling stations, citing an attempt at multiple voting in one, and a member of a political party who was expelled from another polling station for trying to spread propaganda. During the pre-election period, NGOs, both local and international, played a central role in promoting reconciliation by undertaking civic education programs to promote respect for others as a central tenet of these elections. Artists and civil society organisations also joined hands to compose songs appealing for peace, equality and harmony. The efforts of religious leaders and other members of civil society, in convincing General Konaté not to resign, were also significant. Earlier in 2006 and 2007 the civil society movement, led by trade unions and other civil society organizations, launched unprecedented popular protests only to be violently repressed.

The situation in Guinea could result in any one of at least three possible scenarios, dependant on actions taken by the various parties to the crisis:

A peaceful settlement of the fraud allegations in the first round, followed by a successful second round of elections reflecting a clear winner, could consolidate democracy and restore civilian rule and constitutional order in Guinea as well as the country's acceptance back into the AU and ECOWAS and the lifting of international sanctions.

Due to the high level of ethnic partisanship coupled with allegations of electoral fraud and possible divisions in the army a run-off election with close results could exacerbate existing divisions and result in further unrest and instability.

PSC Report Programme, Institute for Security Studies, Addis Ababa. T: +251-11-372-11-54; F: +251-11-372-59-54; addisababa@issafrica.org; www.issafrica.org

Scenario 3:

A run-off election with close results could also lead to the creation of a unity government of Condé and Diallo that could ease ethnic and political divisions in Guinea, provided that both leaders publicly commit themselves to such an undertaking.

Early Response Options:

Given the above scenarios the following options could be considered by the PSC in order to help consolidate democracy in Guinea

Option 1: Closely follow up and monitor the transition process through the ICG-G and its special representative.

Option 2: The PSC might consider liaising with the UNSC and ECOWAS to commission an SSR process in Guinea.

Documentation:

Relevant AU Documents:

PSC/PR/COMM(CXCVII) (10 July 2009) Communiqué on the situation in the Republic of Guinea

PSCIPRI2(WCVII) (10 July 2009) Report of the Commission on the situation in the Republic of Guinea

Assembly/AU/6(XIII) (1-3 July 2009) Report of the Peace and Security Council of the African Union on its Activities and the state of peace and security in Africa, Sirte, Libya

PSCIPRI2 (WCVII) (10 July 2009) Report of the Commission on the situation in the Republic of Guinea.

PSC/PR/BR.2(CCXXXII) (17 June 2010) Press Statement on the developments in the situation in the Republic of Guinea

PSC/PR/BR.4(CXCII) (10 June 2009) Communiqué on the Republic of Guinea

PSC/PR/BR(CLXXXIII) (26 March 2009) Statement on the situation in the Republic of Guinea

RECs Documents:

096/2010 ECOWAS (10 June 2010) Statement on Guinea

003/2009 ECOWAS (10 January 2009) Statement by Leaders Reject Military Transition in Guinea

035/2009 ECOWAS (1 April 2009) Statement on Guinea

UN Documents:

'Evidence of Clandestine Drugs Manufacturing in Guinea Concerns UN', UN News, 5 August 2009

PSC and African Civil Society: Operationalisation of the Livingstone Formula

One of the principles enshrined in the AU's Constitutive Act indicates that the body is striving to become a people-centred organisation. The Preamble to the Constitutive Act of the AU speaks of 'the need to build a partnership between governments and all segments of civil society', whereas Article 4 of the Act provides as one of the principles of the AU 'participation of African Peoples in the activities of the Union.' Specifically in the areas of peace and security, Article 20 of the PSC Protocol requires the PSC to 'encourage non-governmental organizations, community-based and other civil society organisations, particularly women's organisations, to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required, such organisations may be invited to address the

Peace and Security Council.'

The Rules of Procedure of the PSC further elaborate on the participation of civil society in its activities. These are provided for in Rules 15, 16, 21 and 22. Rules 15 and 16 identify the types of PSC meetings in which civil society organisations may participate. Of the three types of meetings of the PSC, civil society may participate upon invitation from the PSC in open meetings (Rule 15) and informal consultations (Rule 16). Rules 21 and 22 specify the requirements or procedures for civil society to participate in the activities of the PSC. The two rules indicate that a civil society organisation that may be invited to address the PSC:

a) needs to have observer status at the AU;

b) shall submit a letter of authority to the AU Commission Chairperson; and

c) requires approval of the letter of authority by the Chairperson.

On the face of it this seems to be a rather onerous process and it is not clear if civil society organisations that addressed the PSC in its open meetings or informal consultations have always complied with all of these procedures.

An important step taken towards the operationalisation of Article 20 of the PSC is the adoption of what is known as the Livingstone Formula. This was adopted in Livingstone,

>>page 20

PSC and African Civil Society: Operationalisation of the Livingstone Formula (continued)

Zambia, on 4 and 5 December 2008, following a retreat of the PSC. As stated in the document PSC/PR/(CLX) 'Conclusions on a mechanism for interaction between peace and security organisations in the promotion of peace, security and stability in Africa' this particular meeting had the objective of considering appropriate mechanism for interaction between the Peace and Security Council and CSOs in the promotion of peace, security and stability in Africa within the framework of Article 20 of the PSC Protocol. The meeting concluded with concrete modalities of interaction and mechanisms for facilitating civil society participation.

The Livingstone Formula states that the PSC will continue to determine its procedures and decisions, and that the Economic, Social and Cultural Council (ECOSOCC), as the consultative organ responsible for coordinating the participation of civil society in the work of the African Union, particularly the Peace and Security Cluster, is the focal point and plays a consultative role in the interaction between the PSC and CSOs.

The Formula also laid down the conditions with which a civil society organisation has to comply in order to interact with the PSC. A Civil Society Organisation must conform to the relevant provisions in the Constitutive Act of the African Union and the provisions in the PSC Protocol, especially Article 8 (10c), as well as the Rules of Procedure of the PSC (Rules 21 and 22). A CSO is also expected to comply with the criteria for eligibility for membership as defined in Article 6 of the Statutes of ECOSOCC, in particular:

- i) it shall be registered in an AU member State in accordance with national legislation of the country;
- ii) it shall uphold the objectives and principles of the African Union, as stated in Articles 3 and 4 of the Constitutive Act of the AU;
- iii) it shall be a member CSO of a national, regional and continental organisation or the African Diaspora, in pursuit of activities at the national, regional or continental level;
- iv) it shall be accredited, with the African Union or an African Regional Economic Community/Regional Mechanism;
- v) It shall solemnly declare to uphold the objectives and principles of the AU, as well as the provisions governing the CSOs in an observer status with the AU Commission, or working with it, including the principle of impartiality;
- vi) it shall belong to a recognised regional or continental umbrella/network of CSOs.

As it may be gathered both from the Rules of Procedure of the PSC and the Livingstone Formula, one important avenue for facilitating participation of civil society in AU processes including the PSC is supposed to be ECOSOCC, which was launched in Addis Ababa in March 2005. The purpose of the establishment of the ECOSOCC was to build a Union that was people-centered, an area in which the AU has usually been criticised.

Requirements for civil society involvement in the areas of peace and security through the

ECOSOCC are listed in the body's statute. However, the threshold is uncharacteristically high. Specifically paragraph 6 of Article 6 requires that at least 50 percent of the basic resources of such an organisation shall be derived from contributions of the members of the Organisation. The reality is that most CSOs are funded by western (non-African) foundations and states. Therefore this criterion cannot be met by the majority of African CSOs. Many of the CSO leaders argue that even the African Union receives a substantial amount of its budget support from external contributors.

The PSC has invited some organisations to brief it on various issues of concern. On 30 March 2009, human rights organizations, particularly those working on women rights, were invited to brief the PSC and this led the PSC to adopt one of its very few thematic communiqués on the situation of women and children in armed conflicts. The outcome of the meeting was said to be the first of its kind and a step in the right direction.

A meeting is reportedly scheduled towards the end of 2010 for the PSC to further consider the operationalisation of the Livingstone formula. In this context, there are certain areas worth exploring.

Although favourable rules and forums for participation of civil society have been established within the framework of Article 20 of the PSC Protocol and civil society, some organisations have begun to participate in the work of the PSC. However, the level of participation of civil society organisations and their actual

>>page 21

PSC and African Civil Society: Operationalisation of the Livingstone Formula (continued)

contributions to peace and security initiatives, still require improvement. Apart from the procedural issues that tend to discourage or prevent active civil society participation, one can identify two factors limiting the extent of civil society participation. The first of this has to do with the institutional culture that the AU inherited from the OAU as being an exclusively inter-governmental institution. Although this is changing, it may take some time before the organisation undergoes an irreversible transformation towards being CSO-friendly. The other factor has to do with a lack

of trust between the AU and civil society organisations. This is an area that both the AU and African civil society organisations need to change and improve.

The following recommendations can be considered as ways to enhance AU-CSO relations:

- The PSC may consider identifying or elaborating areas for the involvement of civil society organisations in the various stages of conflict prevention, conflict management and conflict resolution as well as

post-conflict reconstruction. This would enable the PSC to garner societal support for its decisions and their implementation as well as for deepening ownership of initiatives by the general public.

- The PSC may also consider initiating a thematic dialogue and a briefing forum for CSOs and establish a follow-up system on the holding of regular meetings to enhance mutual trust and cooperation.

The ICC Review Conference

The first review conference of the International Criminal Court (ICC) took place in Kampala, Uganda, from 31 May to 11 June 2010. Attended by around 4,600 representatives of governments, international organisations and NGOs, the conference came at a critical time in the development of the ICC. Although the Court has made important progress since the Rome Statute entered into force in 2002, it still faces many challenges.

These range from how it conducts its court operations to its relations with various interested external actors as witnessed following the arrest warrant issued for Sudanese President Omar Al-Bashir in March 2009.

The review conference had a particular significance for Africa. It presented an important occasion for African governments, sub-regional organisations and civil society to help advance the fight against criminal impunity by re-stating their commitment to justice

for the victims of grave crimes and offering views on the development of international criminal justice and the ICC. This was reinforced by the fact that the conference was held in Uganda, a location that helped forge stronger links between the ICC and Africa, and presented an opportunity for victims and civil society to be heard.

The Main Business: Amendments to the Rome Statute

The main aim of the review conference was to review amendments to the ICC's Rome Statute. Of the three amendments under consideration, the crime of aggression – which seeks to criminalise the use of armed force by one state against another in contravention of the UN Charter – dominated proceedings.

The crime of aggression has been the subject of a dedicated working group of the ICC's Assembly of States Parties (ASP) for the past seven years after delegates at the ICC's Rome conference in 1998

could not agree on the issue. The compromise eventually reached in Kampala is complicated and potentially damaging to the ICC as it creates expectations that cannot be met. It also risks linking the Court – which should be an independent judicial body – to highly politicised disputes between states. Potentially a blessing in disguise, the agreement gives the ICC at least seven years before it would have authority to prosecute these complex crimes.

Agreement on the definition of the crime of aggression was reached fairly easily with states parties essentially adopting the definition that emerged from the ASP's special working group on aggression. Agreement on how the ICC exercises jurisdiction over individuals for the crime of aggression was harder to achieve. Many states were strongly opposed to any move that might strengthen the role of the UN Security Council (UNSC) in deciding which cases could be

>>page 22

The ICC Review Conference (continued)

brought before the ICC. Although the Kampala agreement does not grant the UNSC exclusive control over the Court's authority to prosecute aggression, in practice the UNSC provides the only alternative for aggression-related prosecution of individuals from non-state parties, and non-consenting states parties. Without the UNSC, the ICC's powers to prosecute aggressive wars would therefore be limited to consenting states parties, on both sides of the conflict.

In terms of the agreement, the Court will not be able to exercise jurisdiction until at least 1 January 2017, and then only after 30 states parties have ratified the amendment. Moreover, separate procedures will be employed to deal with the crime of aggression depending on whether the referral was made by the UNSC, by a state party to the ICC, or where the ICC prosecutor decides to utilise his or her inherent powers under the ICC statute, and then only when authorised to proceed by the Court's Pre-Trial Chamber. Like other ICC crimes, the UNSC can refer (and defer) a situation of aggression involving a state that is not party to the ICC statute.

The other jurisdictional triggers, however, create more limited authority for the Court than with regard to genocide, crimes against humanity and war crimes, as the ICC will have no authority to prosecute the crime of aggression when committed by individuals from a state that is not party to the statute unless the UNSC refers the matter. Once the amendment is in force, both states parties (i.e. the aggressor and victim state) will have to consent to the ICC's jurisdiction over the crime. Individuals from states parties that make formal declarations opting out of the

Court's jurisdiction over aggression will therefore not be subject to prosecution for this crime.

In terms of the other amendments that were considered at the conference, delegates agreed to amend Article 8 of the Rome Statute which criminalises the use of certain poisonous weapons and expanding ('dum-dum') bullets, asphyxiating or poisonous gases, and all analogous liquids, materials and devices, when committed in armed conflicts not of an international character. The conference also decided to retain Article 124, which allows new states parties to opt for excluding from the ICC's jurisdiction war crimes, allegedly committed by its nationals or on its territory, for a period of seven years. Article 124 will be reviewed again by the Assembly of States Parties in 2015.

Stocktaking and Civil Society's role

Apart from the amendments, the conference also aimed to take stock of the implementation and impact of the Rome Statute. The 'stocktaking' theme was a late addition to the conference agenda, largely through the encouragement from civil society led by the Coalition for the International Criminal Court (CICC). The stocktaking process accurately identified and raised the profile of the key challenges facing the ICC: the impact of the Rome Statute system on victims and affected communities, peace and justice, complementarity, and cooperation.

Civil society engaged actively in preparations before the conference, as well as the deliberations around these four stocktaking themes, both during official sessions and at side events. The participation of at least 600 civil society organisations was acknowledged by key figures in the

Rome Statute system including the President of the ICC, the Court's Prosecutor, and the Secretary General of the UN who noted in his opening address that the existence of the ICC and the staging of the review conference was made possible 'because of the immense contribution of civil society'.

The session on victims adopted a resolution that among other things, "recognised...the right of victims to equal and effective access to justice, support and protection, adequate and prompt reparation for harm suffered and access to information concerning violations and redress mechanisms" (ICC Press Release, 12 June 2010). The peace and justice session revealed the deep divisions between states on the priority that ought to be given to peace versus justice when dealing with atrocities committed during conflict situations. The sessions on complementarity and cooperation were more productive. The resolution on complementarity recognised states' primary responsibilities for investigating and prosecuting international crimes and the principle that states should assist each other in strengthening domestic capacity. The declaration on cooperation emphasised 'that all states under an obligation to cooperate with the Court must do so' particularly with respect to the execution of arrest warrants.

After sustained efforts by civil society and country focal points before the conference, a major achievement was the presentation of over 100 pledges from nearly 40 states and international organisations. The pledges covered issues like contributions to the Trust Fund for Victims,

>>page 23

The ICC Review Conference (continued)

sentencing agreements with the ICC, ratification of the immunities agreement, and the relocation of witnesses. A new development, the pledges have important potential to encourage active and accountable participation by states parties in the Rome Statute system. Encouraging further pledges and monitoring their

implementation at the national level is a key task for civil society.

Beyond Kampala

Ultimately, the review conference was, in the words of UN Secretary General Ban Ki-moon, an 'occasion to strengthen our collective determination that crimes

against humanity cannot go unpunished...'. Beyond that, it will take the continued collaboration of states parties and civil society to ensure that the many pledges made in Kampala are acted upon, and that the crime of aggression is resolved in a manner that does not further polarise supporters of the Rome Statute system.

Important Forthcoming Dates

August 2010: Meeting on African Model Law on Counter-Terrorism, Addis Ababa

9 September 2010: African Union Day

21 September 2010: International Day of Peace

22-25 September 2010: Millennium Development Goals conference, New York

Country	Election	Date
Côte d'Ivoire	Presidential	Mid-2010
Kenya	Constitutional Referendum	4 August 2010
Ghana	Local Government	August 2010
Rwanda	Presidential	August 2010
Chad	National Assembly	28 November 2010
Egypt	People's Assembly Shura Council (half of the members)	November 2010
Equatorial Guinea	Presidential	December 2010

Contributors to this Volume:

ISS PSC Report Programme: Dr. Duke Kent-Brown, Dr. Solomon Dersso, Hallelujah Lulie, Eden Yohannes Yoseph,

Consultant Dr Tim Murithi

ISS African Conflict Prevention Programme, Addis Ababa: Berouk Mesfin, Wondwosen Michago Seide

ISS International Crime in Africa Programme, Tshwane/Pretoria: Antoinette Louw

Donors:

This Report is published through the support of the Ministry of Foreign Affairs of the Federal Republic of Germany, the Government of Denmark, the Foundation Open Society Institute, and the Humanity United Foundation. In addition, the Institute for Security Studies receives core support from the Governments of Norway, Sweden and the Netherlands.

As a leading African human security research institution, the Institute for Security Studies (ISS) works towards a stable and peaceful Africa characterised by sustainable development, human rights, the rule of law, democracy and collaborative security and gender mainstreaming.

© 2010, Institute for Security Studies

Copyright in the volume as a whole is vested in the Institute for Security Studies, and no part may be reproduced in whole or in part without the express permission, in writing, of the Institute. The opinions expressed do not necessarily reflect those of the Institute, its trustees, members of the Advisory Council or donors.

Contact

Programme Head
Peace and Security Council Report Programme
Institute for Security Studies
P.O. Box 2329
Addis Ababa, Ethiopia

Tel: +251-11-372-11-54
Fax: +251-11-372-59-54
Email: addisababa@issafrica.org

website: www.issafrica.org

