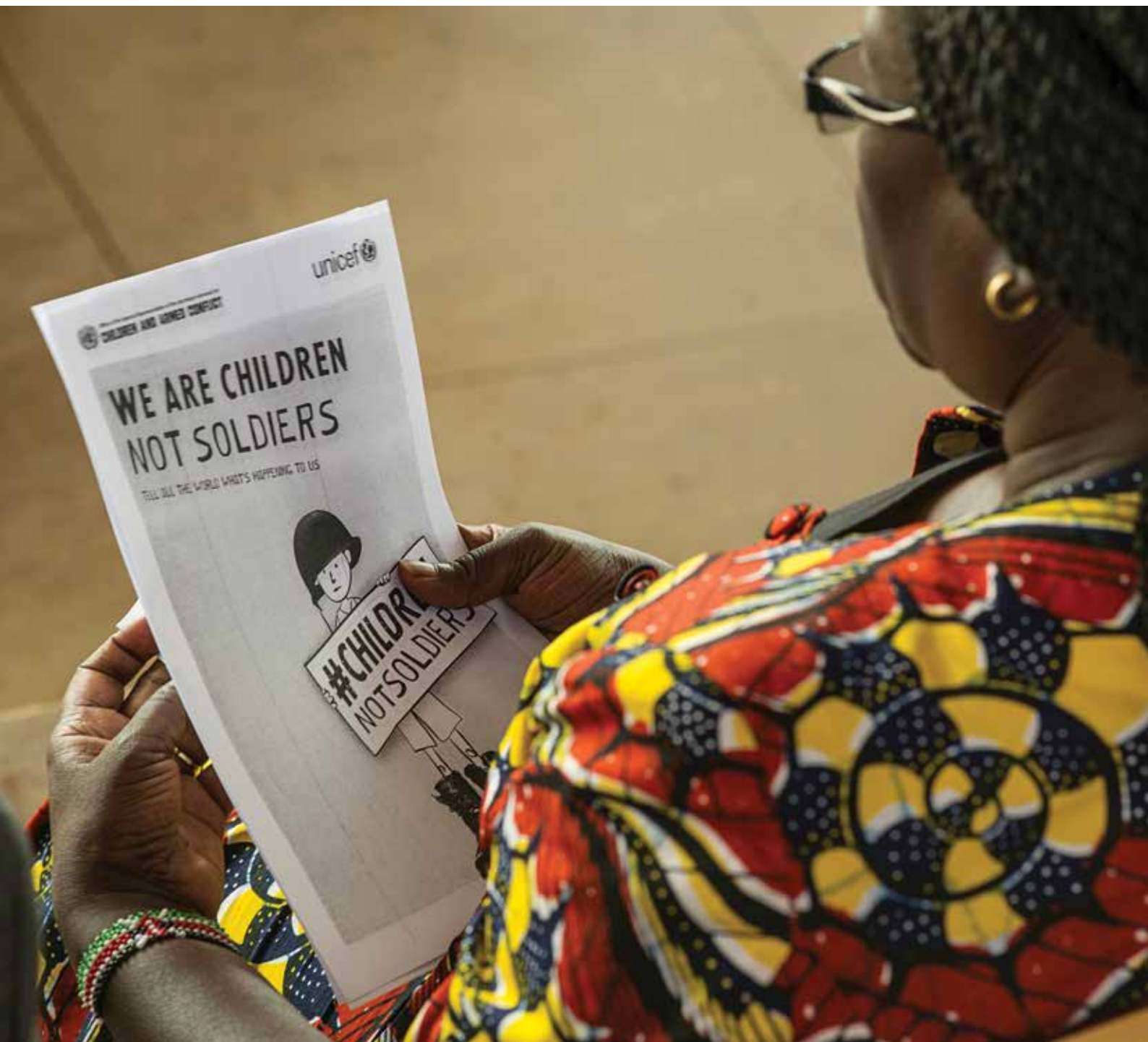


# CONFLICT TRENDS

ISSUE 2, 2016



# CONTENTS

EDITORIAL 2 by Vasu Gounden

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FEATURES 3 **To Punish or to Reform? Survivor Justice in Africa**  
by Christopher Zambakari



12 **Beyond the Disease: How the Ebola Epidemic Affected the Politics and Stability of the Mano River Basin**  
by Ibrahim Al-bakri Nyei



20 **What are the Human Rights Obligations of UNMISS to those Sheltering on its Protection Sites?**  
by Conor Foley



28 **The Place for Amnesty in Zimbabwe's Transitional Justice Process**  
by Edknowledge Mandikwaza



36 **Understanding Civil Militia Groups in Somalia**  
by Lucas Mahlasela Makhubela



45 **Understanding the Recruitment of Child Soldiers in Africa**  
by Anne-Lynn Dudenhoefer

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BOOK REVIEW 54 ***From Classrooms to Conflict in Rwanda* - Elizabeth King**  
by Karyn Bakelaar

Cover: A mother reads campaign material during the official launch of the "Children, Not Soldiers" campaign in South Sudan, a collaboration between the United Nations and the Government of South Sudan. Juba, South Sudan (29 October 2014). UN Photo/JC McIlwaine.



The African continent is in a race against time.

Although many African countries have achieved positive gains in realising their development agendas

and economic growth rates, uneven progress in eliminating poverty, unemployment and socio-economic inequality are significant threats to achieving the African Union (AU) Agenda 2063's long-term vision of an "integrated, prosperous and peaceful African continent".<sup>1</sup>

Widespread poverty, inequality and unemployment continue to characterise national socio-economic contexts, as skills, opportunities and capital remain concentrated within small centres of societies. Long-term strategies to reduce these societal gaps include massive investments in education (especially primary education) and infrastructure. Successful investments in education and associated skills will enable citizens to meet the evolving demands of an increasing global economy. Stronger infrastructure will enable the development of complementary economies – based in industrialisation and the information age – which are central for encouraging inclusive and broad-based economic development.

Advancing structural changes in education and infrastructure development can take, at a minimum, over 20–30 years to affect discernible change. This is precisely why the AU's Agenda 2063 charts Africa's development trajectory over a 50-year time frame, instead of a 15-year time frame. The policy priorities outlined in Agenda 2063 need to be undertaken immediately to observe progress for the next generation.

However, structural transformations are complicated by the unprecedented convergence of global forces – namely threat multipliers – that amplify Africa's development challenges. These include:

- Exponential population growth: By 2050, the African continent will be home to over 2.4 billion people, representing 25% of the world's population. Over half of those 2.4 billion citizens will be under the age of 18 years.<sup>2</sup>
- Rapid and unplanned urbanisation: Africa is the fastest urbanising continent and by 2050 approximately 56% of its inhabitants – over 1.3 billion people – will reside in urban areas.<sup>3</sup>
- Global economic challenges and decline in commodity prices: Africa has been affected adversely by the global economic decline – especially by China's shift from an investment- to consumption-oriented economy and the precipitous drop in commodity prices.<sup>4</sup>

- Climate change: The 2014 Intergovernmental Panel on Climate Change (IPCC) Report concluded that temperature increases across Africa will exceed the 2°C threshold by 2100.<sup>5</sup>

The convergence of these forces will foster disruption and increase the likelihood of conflict. As we have witnessed in many contexts, conflict sets back development agendas for decades at a time. South Sudan's recent conflict is estimated to cost over US\$7 billion in development over the next five years, and the Intergovernmental Authority on Development (IGAD) region's conflicts over US\$53 billion in the same period.<sup>6</sup>

For Africa to achieve the aspirations of Agenda 2063, the continent must place greater emphasis on preventing and mitigating conflicts efficiently and effectively. Africa's youth bulge and rapid urbanisation, coupled with massive investments in education and infrastructure, present a unique opportunity for long-term transformation. If we do not take advantage of this, Africa's chances at inclusive and sustainable development may be lost.

The clock is ticking. ▲

**Vasu Gouden is the Founder and Executive Director of ACCORD.**

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# TO PUNISH OR TO REFORM? SURVIVOR JUSTICE IN AFRICA

BY CHRISTOPHER ZAMBAKARI



GALLO IMAGES/ APTONY KARUMBA

## Introduction

In the post-World War II period, two broad conceptualisations of justice can be identified: survivor justice and victor's justice. This article focuses only on survivor justice as a model more suitable to African contexts, where conflicts are mostly internal and there are rarely decisive military victories between political adversaries. Survivor justice is a form of transitional justice that aims to transcend the binary of victim/perpetrator by combining impunity for all participants with political reform that transforms institutions of society. Survivor justice is based

on a complete transformation of society emerging from mass violence.<sup>1</sup> It redefines the victors and the vanquished as survivors after mass violence, allowing both to coexist in a reformed political community. It also reconciles the logic of rights and justice with reconciliation and peace in a context where there is no decisive winner. Survivor justice prioritises the living over the dead.

**Above: Survivor justice takes survivors of conflict and violence as the starting point and prioritises reform over prosecution.**

To avoid the problem of pitting peace against justice, I will first distinguish between forms of justice, and view peace and justice as complementary and not opposites. The research question is: what is the potential for advancing contemporary peace processes and negotiated agreements through the notion of survivor justice? In this article, I argue that in contexts where a decisive military victory is untenable, survivor justice – that is, political reform combined with judicial reconciliation – is the best way to resolve Africa’s intractable conflicts. First, I introduce and develop the conceptual framework of survivor justice. Second, I critique the universalisation of human rights discourse around justice. Third, I discuss survivor justice in peace agreements in the context of mass violence, and then in the case of Rwanda and how it has implemented survivor justice in dealing with the aftermath of the 1994 genocide through indigenous institutions known as *gacaca*.

## IN A SITUATION WHERE THERE IS NO WINNER AND THUS NO POSSIBILITY OF VICTORS’ JUSTICE, SURVIVORS’ JUSTICE MAY INDEED BE THE ONLY FORM OF JUSTICE POSSIBLE

### Peace and Survivor Justice

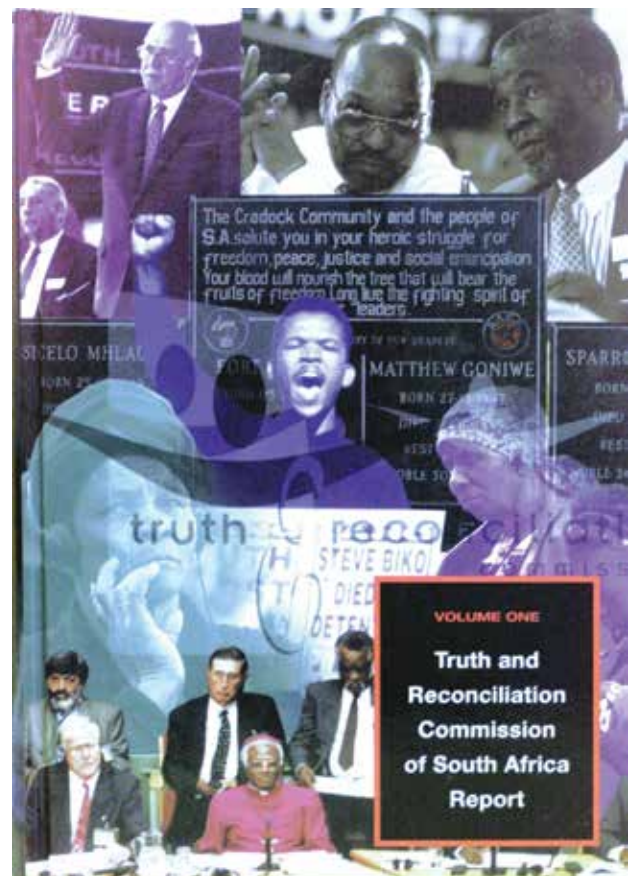
To answer the question: ‘what is the potential for advancing contemporary peace processes and negotiated agreements through the notion of survivor justice?’, the intellectual legacy of modern-day human rights discourse and the distinction between two main conceptualisations of justice need to be understood. In his critique of the tendency to universalise human rights discourse, Anthony Pagden writes that “if we wish to assert any belief in the universal we have to begin by declaring our willingness to assume, and to defend, at least some of the values of a highly specific way of life”.<sup>2</sup> Pagden argues that the genesis of human rights and natural rights, which later gave birth to international law and global justice, needs to be understood as part of the liberal tradition of rights that goes back to the Greeks and Romans. The liberal tradition is intricately connected to a history of European imperial expansion, which later gave birth to liberal peace. Pagden also argues that the tradition out of which we get our modern-day human rights convention excluded many other traditions (African, Asian and various indigenous traditions around the world), and calls for a cautious embrace of today’s commonly accepted discourse on rights. The notion of survivor justice arises in response to a dilemma of conflicts in plural and divided societies about how to end ongoing violence and how to ensure justice and reconciliation. In Africa, Mahmood Mamdani has argued that we need to distinguish between different forms of justice to create a space where conflict resolution can take place. Mamdani proposes survivor justice, which takes survivors as

a starting point and prioritises reform over prosecution.<sup>3</sup> This challenges the belief that reform can only come through the court (trials), as the only viable alternative to dealing with the aftermath of mass violence. This articulation is increasingly gaining support in places where conflict is intractable and victory untenable through military means.

Furthermore, Mamdani notes: “[I]f one insists on distinguishing right from wrong, the other seeks to reconcile different rights. In a situation where there is no winner and thus no possibility of victors’ justice, survivors’ justice may indeed be the only form of justice possible.”<sup>4</sup> Victor’s justice – which, according to Mamdani, is represented by the Nuremberg trials – is premised on certain liberal assumptions, namely decisive military victory over an adversary, and separation of victims and perpetrators (for example, the birth of the state of Israel). In another article, Mamdani puts survivor justice in context and explains why it paved the way for South Africa’s transition in the 1990s.

Mamdani writes:

If South Africa is a model for solving intractable conflicts, it is an argument for moving from the best to the second best alternative. That second best alternative was political reform. The quest for reform, for an alternative



GALLO IMAGES/REUTERS/JUDA NGWENYA

**South Africa’s Truth and Reconciliation Commission embodied survivor justice as it prioritised reform of the country and reconciliation of people over prosecution.**



**South African President Nelson Mandela and Deputy President F.W. de Klerk hold their hands high in unity in front of the Union Building after the inauguration ceremony (10 May 1994).**

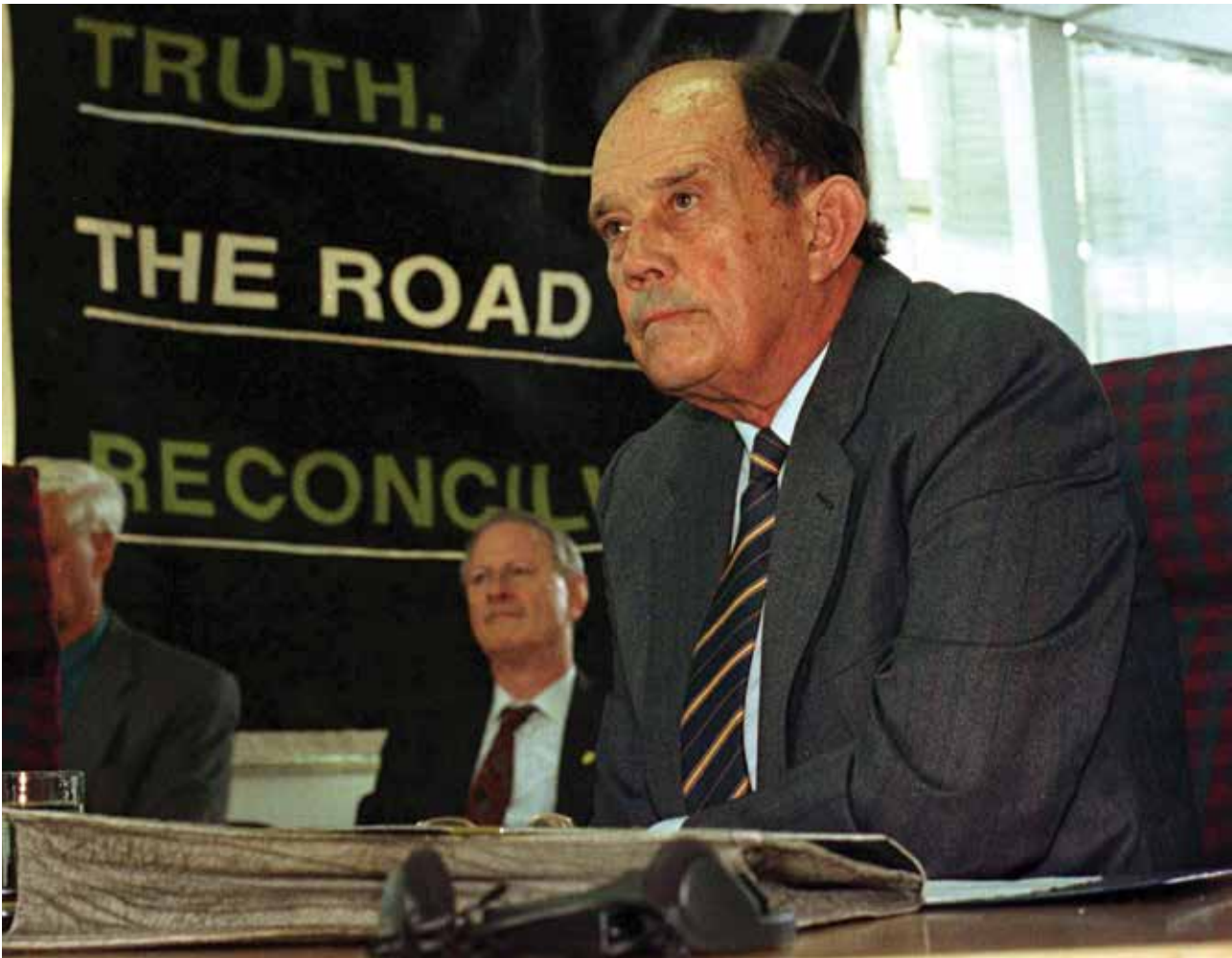
short of victory, led to the realization that if you threaten to put the leadership from either side in the dock they will have no interest in reform. This change in perspective led to a shift, away from criminalizing or demonizing the other side to treating it as a political adversary.<sup>5</sup>

In cases where victims, survivors, beneficiaries and former perpetrators must live side by side, there is a need to rethink the model of criminal justice and instead shift the discussion towards survivor justice. Survivor justice – which Mamdani associates with post-apartheid transition – then combines impunity with political reform (political settlement) and judicial reconciliation (Truth and Reconciliation Commission/TRC).

Today, one finds two competing conceptualisations of justice that are championed by various actors in the international community. On the one hand, human rights organisations advocate for the prosecution of perpetrators of violence.<sup>6</sup> For many of these organisations, criminal justice is an indispensable key to peace. On the other hand are scholars and policymakers, who want a pragmatic approach to ending violence. The challenge for many countries in

Africa is how to end violence and create the space where issues of justice and reconciliation can be discussed and negotiated. In South Africa, for example, it was only after the formation of the Convention for a Democratic South Africa (CODESA) I and II, followed by the negotiated settlement at Kempton Park and the decriminalisation of the African National Congress (ANC), that the path to peace – and, ultimately, transition – was opened.<sup>7</sup> Without first reaching a political settlement, it would have been difficult for South Africa to transition to a democracy. The question that many plural societies in Africa face is how to end violence (end of hostilities), hold perpetrators accountable (justice) and achieve peace (conflict transformation). In a situation where one needs those in power to reach a settlement, demanding criminal justice is tantamount to demanding the impossible when a military victory is untenable. This is where survivor justice is useful as an alternative or a second-best solution to an intractable conflict.

Survivor justice does not advocate for blind impunity and blanket amnesty. It distinguishes between forms of justice by prioritising the living over the dead, proposing a combination of impunity combined with reform, and sequences the



**Former South African Defence Minister, General Magnus Malan, testifies before the Truth and Reconciliation Commission in South Africa. In his testimony Malan urged the Commission to forget about revealing apartheid crimes so that the country could bury the past and build the future.**

process of transitional justice.<sup>8</sup> This sequence of processes is well summarised by Jok Madut Jok, who advocates for a sequential approach to the ongoing peace process in South Sudan, to avoid “the temptation to rush for a bad peace deal which returns the country to war versus the prolonged peace process that risks the loss of more human lives but produces a sustainable peace”.<sup>9</sup> At the core of survivor justice is not a trade of peace for justice, but an exchange of “amnesty for the willingness to reform”.<sup>10</sup> How would survivor justice work in the intractable conflicts in Africa? A number of key processes can be sequenced on multiple tracks (if necessary) over time. According to Jok, this entails:

...a sequential peace process, beginning with an enforceable cessation of hostilities and followed by a negotiated settlement, even if that settlement is between the elite, and an insistence by the mediators on a strong political and financial commitment from the parties to a programme of post-war reconstruction, institutional reform, especially a strong security sector reform, justice,

accountability for war crimes, national dialogue, healing and reconciliation.<sup>11</sup>

In a sense, survivor justice delays criminal proceedings to give negotiated settlements a chance. This often begins with a negotiated ceasefire, followed by a political settlement, and then issues of transitional justice are built into the process or sequenced on a separate track from the negotiated agreement among conflict parties.

#### **Survivor Justice and Negotiated Peace Agreements**

Justice is important in peace processes.<sup>12</sup> In the literature on violence and negotiated settlements, there is a lively debate on why some conflicts are successfully negotiated and others remain intractable and insoluble; why negotiators fail in one context and succeed elsewhere. There is increasing evidence that the process and content of agreements – as well as the different forms of justice – play a crucial role in settling disputes during negotiations. There

is a relationship between negotiations (content and process) and the durability of negotiated peace agreements.<sup>13</sup> Two forms of justice are particularly relevant to survivor justice: procedural justice and distributive justice. Daniel Druckman and Cecilia Albin note that justice can complicate the peace process, when various competing forms and principles of justice are championed by the conflict parties.<sup>14</sup> I. William Zartman and Viktor Aleksandrovich Kremeniuk, in their studies of conflicts from the Thirty Years' War to the Napoleonic Wars, and many wars in the 20<sup>th</sup> and 21<sup>st</sup> century, found that various conceptualisations of justice led to different outcomes in conflicts. They call these forms "forward-looking" and "backward-looking" principles of justice.<sup>15</sup> The former is positive-sum justice that looks to the future, whereas the latter justice is preoccupied with issues of the past. Zartman and Kremeniuk refer to Mamdani's distinction between survivor justice and criminal justice. When Druckman and Albin analysed 16 peace agreements, they found that "[a]greements with equal treatment and/or equal shares were associated with highly forward-looking outcomes and high durability, and equal measures with a more backward-looking outcome and poorer durability".<sup>16</sup> In other words, agreements that were forward-looking and based on survivor justice principles led to positive outcomes

and high durability. These findings have support in the African context: South Africa, Mozambique and Sudan all had negotiated settlements that were based on the principles of survivor justice.<sup>17</sup> In the context where criminal justice has been invoked – in conflicts in Sudan (an example of both types of justice), Uganda and elsewhere in Africa – the effects mostly have been the prolongation of violence.<sup>18</sup> In the case of Sudan, the major axis of conflict (north/south) was brought to an end through the Comprehensive Peace Agreement (CPA), while the conflicts within the Republic of the Sudan and the Republic of South Sudan continue.<sup>19</sup> This partly explains the decision of the negotiators in South Africa, Mozambique and Sudan to subordinate criminal justice to prioritise survivor justice. Successful agreements that are durable depend on two issues in relation to justice: procedural justice (the fair representation of stakeholders or inclusivity) and the degree to which issues are addressed during negotiations.<sup>20</sup>

Andrew Natsios, US Special Envoy to Sudan between 2006 and 2007, noted:

The Comprehensive Peace Agreement says not one word about prosecuting war crimes or compensating the victims of atrocities for just this reason: back in 2003, during the peace negotiations, Garang wisely realized



GALLO IMAGES/GETTY IMAGES/PER-ANDERS PETTERSSON

**The *Gacaca* courts are an indigenous justice mechanism in Rwanda, where the involvement of lawyers is prohibited and reconciliation is the driving principle.**





**Gacaca courts grant short sentences when a person is repentant and seeks reconciliation with the community.**

that if he demanded justice, the north–south war would not end (he also knew the southerners had committed their share of atrocities). Instead of war crimes trials, the South African model of a truth and reconciliation commission might be considered.<sup>21</sup>

Given the evidence that different conceptualisations of justice have different effects on negotiated peace agreements, the question that arises is whether human rights organisations have been wrong in promoting criminal prosecution within the process of ongoing peace talks, or is the position taken by continental organisations (like the African Union) – to defer indefinitely the publication of reports of inquiry into violence on the continent in order to prioritize peace talks – the better option? Both groups are

**GACACA IS NOW SEEN AS THE WAY FORWARD, DUE TO ITS ABILITY TO REFORM FORMER PERPETRATORS AND REINTRODUCE THEM INTO SOCIETY AT VERY LOW COST COMPARED TO THE TRADITIONAL, WESTERN COURT SYSTEM**

right, to an extent. Victims need to know that perpetrators are held to account under the law. This needs to be negotiated, alongside the pressing need to allow the peace talks to deliver peace through a negotiated settlement. How does one find a middle ground between these two positions? It is achieved through the sequencing of transitional and peace processes by prioritising different forms of justice at different stages. This continues through the enforceable cessation of hostilities, a negotiated settlement (whether it is inclusive or only between elites), commitment from all conflict parties to reform (as in the South African example), security sector reform (key in the case of South Sudan), and the formation of transitional justice mechanisms (such as truth commissions, national dialogues, and healing and reconciliation mechanisms). The timing and sequence of these processes are key. The exception to a negotiated settlement and sequenced processes is the case of a decisive military victory – for example, that of the Allied powers' victory over the Axis powers during World War II.<sup>22</sup> In cases where there is no decisive military victory, negotiated settlements and survivor justice offer the best alternative to ending violence, thus paving the way to durable peace.

The following section presents a case study to illustrate the contemporary implementation of survivor justice



**A genocide survivor meets with the man accused of killing his wife and children in 1994. The accused was released from prison and the two men meet to talk about what happened (February 2003).**

principles, using a hybrid model based on indigenous institutions in Rwanda.

#### ***Gacaca*: Survivor Justice in Rwanda**

Survivor justice by itself, without reform and other complementary transitional mechanisms, cannot lead to durable peace. To deal with the aftermath of the Rwanda genocide, the government pursued a three-pronged approach that combined various forms of justice (criminal and survivor) and formed three sets of institutions: the International Criminal Tribunal for Rwanda (ICTR), the national court system and the *Gacaca* courts. The *Gacaca* courts are an indigenous justice mechanism, where the involvement of lawyers is prohibited and reconciliation is the driving principle.<sup>23</sup> *Gacaca* is also a form of restorative justice<sup>24</sup> based on survivor justice principles, whereas the Arusha Tribunal represents criminal justice principles. Following the South African model, the *Gacaca* courts grant short sentences when a person is repentant and seeks reconciliation with the community,<sup>25</sup> lending support to the emerging paradigm of political reform combined with judicial reconciliation as an alternative to dealing with legacies of mass violence. These courts have processed one

THE UNITED NATIONS ALSO RECOGNISED THAT THE “MAJORITY OF PERPETRATORS OF SERIOUS VIOLATIONS OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW WILL NEVER BE TRIED, WHETHER INTERNATIONALLY OR DOMESTICALLY”

million cases over 10 years at a cost of US\$40 million, and are the centrepiece of Rwanda’s justice and reconciliation process. *Gacaca* is now seen as the way forward, due to its ability to reform former perpetrators and reintroduce them into society at very low cost compared to the traditional, Western court system. The Arusha Tribunal included a total of 69 trials, at a total cost of US\$1 billion.<sup>26</sup> According to Phil Clark: “A vast genocide caseload – as many as one million cases – has been handled by *Gacaca* courts in a decade. In fifteen years the ICTR, based in Arusha, has completed 69 trials. *Gacaca* has cost about US\$40 million, the ICTR more



**The *Gacaca* jurisdiction in Rwanda has a long tradition. For centuries, conflicts in the villages were resolved in this way.**

than US\$1 billion.”<sup>27</sup> In this regard, countries that have prioritised reconciliation over criminal justice have had to balance justice, truth, peace and security. Rwanda shows that criminal justice can be complementary to other forms of justice when it is sequenced over time and embedded in indigenous institutions.

### Conclusion

This article began with the question of what the potential is for advancing contemporary peace processes and negotiated agreements through survivor justice. It presented and discussed the case of survivor justice, its underlining assumptions and the context that gave rise to its usage in the African context (South Africa, Rwanda, Mozambique and Sudan) in advancing contemporary peace processes and negotiated agreements. Survivor justice should be seen as a second-best alternative to decisive military victory. Many conflicts in Africa are internal, civil war-type conflicts, where attempts to achieve victory are untenable. The United Nations also recognised that the “majority of perpetrators of serious violations of human rights and international humanitarian law will never be tried, whether internationally or domestically”.<sup>28</sup> This realisation has contributed to making the case for survivor justice as a way of facilitating

the settlement of ongoing conflicts and reconciliation in the aftermath of violence. The cases of South Africa (CODESA/TRC) and Rwanda (*Gacaca*) illustrate the successes of survivor justice in post-conflict contexts.

In South Africa, criminal justice was subordinated to survivor justice. In Rwanda, survivor justice has been prioritised as the *Gacaca* courts combine retributive and restorative justice. In both cases, a sequential approach to reform was adopted. These approaches represent a trade-off between impunity and structural reform (with less institutional reform in the latter case than the former). Survivor justice is not confined to Africa. Mamdani shows that it can be seen in practice “from post-Franco Spain, to Latin American transition to civilian rule and electoral democracy”.<sup>29</sup> The future of durable peace in Africa, and other contexts where violence is ongoing and a negotiated settlement is difficult to reach, rests on a flexible mechanism that combines political reform with judicial reconciliation, built on a hybrid foundation of local institutions and regional/international best practices to complement domestic institutions. Justice that avoids zero-sum logic is more viable in the search for durable peace in divided societies where decisive military victory is untenable. ▲

**Dr Christopher Zambakari is a Board Member of The Sudan Studies Association, Chairman of the Board for The Nile Institute for Peace and Development, and the Chief Executive Officer of The Zambakari Advisory, L.L.C.**

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# BEYOND THE DISEASE: HOW THE EBOLA EPIDEMIC AFFECTED THE POLITICS AND STABILITY OF THE MANO RIVER BASIN

BY IBRAHIM AL-BAKRI NYEI



## The Mano River Union

### Introduction

In late 2013, the Ebola virus was diagnosed in the forest region of Guinea. By mid-2014, it had spread alarmingly in the countries of the Mano River Basin – Liberia, Guinea and Sierra Leone. By the time it was declared a global health emergency by the World Health Organization (WHO) in August 2014, at least 1711 people were infected and 932 people had died from the virus.<sup>1</sup> The Ebola virus was an alien phenomenon among both healthcare workers and ordinary people, and the affected countries lacked the capacity to respond effectively. The lack of proper response mechanisms at the beginning of the outbreak enabled the virus to spread rapidly, with a 90% fatality rate among the population, leaving citizens – mostly those in densely populated slum communities – in despair and desperation. What became

further at risk was the stability of the three countries, two of which – Liberia and Sierra Leone – were still recovering from civil conflicts that had ended a decade earlier. While the crisis was largely health-based, it gravely affected political and security situations, leading observers to predict collapse, violence and a possible return to war.

Under what prevailing socio-economic conditions did the epidemic spread, and how did it pose political and security threats to the affected countries? How did the governments and their international partners respond to the crisis? How did the epidemic and response mechanisms lead to political and social tensions? With evidence from Liberia, this article explores these questions and advances some recommendations for promoting stability, with a focus on human security.



**Anthony Banbury, the Special Representative of the Secretary-General and Head of the United Nations Mission for Ebola Emergency Response (UNMEER), visits a safe burial site for Ebola victims in Freetown, Sierra Leone (2 November 2014).**

### **The Mano River Basin: A Region in Perpetual Fragility?**

The countries in the Mano River Basin have been governed under mostly autocratic rule since independence. Strongman politics and one-party rule dominated the region and led to political uprisings and, ultimately, violent civil crises in the 1990s. Liberia and Sierra Leone experienced 14 years and 10 years respectively of wars, causing death, destruction of properties and mass displacements.<sup>2</sup>

In Guinea, strongman politics and military dictatorship led to continuous civil unrests and pockets of insurgencies. With the exit of Liberian president Charles Taylor in 2003, the countries in the region began transitioning from war to peace, with the aid of international organisations. The United Nations (UN) has kept a strong military and civil presence in Liberia and Sierra Leone. Côte d'Ivoire, which borders Liberia and Guinea, experienced instability and intermittent violent conflict during the same period. Both Côte d'Ivoire and Liberia currently have active UN missions facilitating peacebuilding.

At the time of the Ebola outbreak in 2013, all the countries in the Mano River Basin had reached some level of political stability, with no major outbreaks of violence for about 10 years and with democratic elections being held periodically

to facilitate constitutional transitions of power. Liberia and Sierra Leone had two successful post-war elections, and Guinea held its first multiparty elections in 2010. The rise of civil society movements and massive international aid to support development programmes provided hope for building a sustainable democratic culture across the region and promoting socio-economic development. However, reports on these countries regarding human development, public integrity, corruption perception and fragility were appalling. In 2013, for example, Liberia, Guinea and Sierra Leone were at the bottom of the UN Development Programme (UNDP) Human Development Index, appearing in the category of Low Human Development. At the same time, Liberia and Sierra Leone were ranked among the countries with the highest poverty headcount percentages, based on the UNDP Multidimensional Poverty Index, at 85% and 77% respectively.<sup>3</sup> In the same year, the three countries were declared among the world's most fragile countries, with Liberia and Sierra Leone being put on alert, and Guinea on high alert.<sup>4</sup> The countries in the region were perceived to be very corrupt, as shown by their respective scores in the Corruption Perception Index.<sup>5</sup> Table 1 highlights the severity of the political and socio-economic conditions in the three countries at the time of the outbreak of the virus in 2013.

**Table 1: Poverty, Corruption and State Fragility<sup>6</sup>**

Country	Human Development Index	Corruption Perception Index	Failed States Index
Liberia	0.388	38	95.1 (alert)
Guinea	0.355	24	101.3 (high alert)
Sierra Leone	0.359	30	91.2 (alert)

Massive poverty and weak state institutions – underpinned by official corruption and patronage politics – are symptoms of state fragility, and have been the case for a long time in Liberia, Guinea and Sierra Leone. No wonder, therefore, that the governments in these most-affected countries lacked the capacity to respond adequately to the epidemic and prevent its spread among the already-destitute population. But this lack of response speaks to the larger issue of the absence of state institutions in areas far from the capital city. The overly centralised governance systems in the region have not provided for effective and sustainable service delivery at a local level. It is the prevalence of such governance arrangements – in which local officials have to take orders from the capital city before acting – that rendered local officials and healthcare workers incapable of responding to the Ebola outbreak when it started in the rural areas of Guinea, Liberia and Sierra Leone.

#### The Human Toll of the Ebola Epidemic

The lack of adequate healthcare systems, particularly at local levels (rural areas), resulted in the Ebola virus spreading from a remote forest community in Guinea to densely populated urban communities in Liberia and Sierra Leone. In Liberia, fear of the virus led to the closure of regular health centres, compelling people mostly to self-treat. This likely led to more deaths from curable diseases such as malaria and typhoid fever, which are also prevalent in the country. Actual figures show that the active transmission of Ebola in the Mano River Basin in 2013–2015 resulted in more infections and deaths than the total death toll across all outbreaks since the virus was first discovered in the Democratic Republic of the Congo (then Zaire) in 1976.<sup>7</sup> Liberia alone accounted for nearly half of the total deaths across the three countries. Table 2 shows the human toll of the epidemic in the three countries, as of September 2015.

**Table 2: Human Toll of the Ebola Epidemic<sup>8</sup>**

Country	Cumulative Cases	Deaths
Liberia	10672	4808
Guinea	3805	2533
Sierra Leone	13911	3955
<b>Total (Mano River Basin)</b>	<b>28388</b>	<b>11296</b>

#### How did the Governments Respond?

The rapid spread of the Ebola virus and the consequent death and chaos outweighed the capacity of the three governments to respond. By August 2014, the death rate had increased alarmingly and the population was frustrated. Hospitals were flooded with patients, health workers and medicines were in short supply, and health centres in Liberia rejected patients, while in Sierra Leone, strikes among healthcare workers worsened the situation. The population grew weary of the weak and inefficient response and retaliated in frustration – for example, in Guinea, villagers attacked and killed public health workers on allegations of spreading the virus. The governments resorted to security and political methods to contain the outbreak.

**HOSPITALS WERE FLOODED WITH PATIENTS, HEALTH WORKERS AND MEDICINES WERE IN SHORT SUPPLY, AND HEALTH CENTRES IN LIBERIA REJECTED PATIENTS, WHILE IN SIERRA LEONE, STRIKES AMONG HEALTHCARE WORKERS WORSENERD THE SITUATION**

A state of emergency was declared and all three countries closed their respective borders to prevent the movement of people, in an attempt to contain the Ebola virus. The International Crisis Group (ICG) warned that the spread of the virus and the military response by the three governments threatened stability, and could return the region to chaos.<sup>9</sup> This claim was validated by the Liberian government when it declared that it no longer had the capacity to deal with the outbreak, warning further that the epidemic could lead to war in the country.<sup>10</sup> Passionate pleas

were made to the international community for assistance, which led to the United States (US), France and Britain setting up military hospitals and logistical support units in Liberia, Guinea and Sierra Leone respectively. The military response by the governments in the affected countries exacerbated fear and panic among citizens – but, as the ICG suggested, the governments had more soldiers than doctors, thus they deployed their military strength, even though it was a health crisis. Like the governments in the affected countries, the three foreign powers responded through their militaries, in addition to other channels of support, to end the epidemic.

These responses heightened tensions between the sitting governments and opposition parties in Guinea and Sierra Leone, both of which were preparing for major elections. In Guinea, longstanding differences between the government and the opposition on scheduling local elections intensified when the government announced that it could only organise the presidential election in 2015 and that local elections would be postponed until 2016, due to the outbreak of the Ebola virus.<sup>11</sup> In Sierra Leone, the national census – which is significantly linked to elections – was postponed, and opposition parties accused the government of the intent to extend its rule by postponing the general elections, using the Ebola epidemic as a *cause célèbre*.<sup>12</sup> The

Liberian government's response to the outbreak led to mixed results. The evidence of security threats became even more conspicuous when measures such as night-time curfews and the heavy deployment of security forces at checkpoints were taken by government.

Ultimately, the mobilisation of communities by the government and local non-governmental organisations (NGOs) as key stakeholders in the fight against the virus became the most successful response mechanism to end the human-to-human transmission of the disease.

## THE EVIDENCE OF SECURITY THREATS BECAME EVEN MORE CONSPICUOUS WHEN MEASURES SUCH AS NIGHT-TIME CURFEWS AND THE HEAVY DEPLOYMENT OF SECURITY FORCES AT CHECKPOINTS WERE TAKEN BY GOVERNMENT

### **Political Instability and Insecurity in Liberia**

The news of deployment of US military personnel in Liberia heightened fear in the population as rumours of coups and instability spread. Consequently, the Liberian government announced a curfew and restricted movements –



CORPORAL PAUL SHAW/MOD

**Health workers wearing protective clothing are carefully kitted out before they enter a home to decontaminate it. Freetown, Sierra Leone (10 February 2015).**





**Liberian security forces stand in front of protesters following clashes at the West Point neighbourhood in Monrovia (20 August 2014).**

including the quarantining of some communities suspected of harbouring Ebola patients. Those measures fell short of containing the spread of the virus effectively and stabilising the growing tensions. The postponement of the senate elections with the linked constitutional challenge, as well as the announcement of extra-emergency powers coupled with resistance in some communities, further exposed the fragile country to internal shocks. The reaction from the government, which led to political tension to the point of threatening stability in Liberia, is the focus of the following subsections.

### ***Emergency Powers and Social and Political Tensions in Liberia***

At the beginning of the outbreak of the Ebola virus, many Liberians denied the existence of the virus and accused the government of orchestrating a ploy to attract foreign aid. In their denial, people refused to comply with public health regulations, continued traditional burial rites and resorted to traditional healing methods. This is understandable in a country with a massive illiteracy rate, and with a history of broken trust between the state and its citizens. On 6 August 2014, a state of emergency was declared in Liberia, along with a night-time curfew. This gave the government the

authority to enforce extra-constitutional measures. One of the casualties of these emergency powers was press freedom, marked by the arrest of journalists and the lock-down of a newspaper.<sup>13</sup> West Point, a densely populated slum in the city of Monrovia, was quarantined when residents ransacked and looted an Ebola Treatment Unit (ETU), accusing the government of not consulting them and threatening their health by the establishment of the ETU. Local residents resisted the quarantine, and they were not allowed to protest due to the state of emergency. The government then enforced the quarantine by deploying armed security personnel and blocking all entries into the slum community. This was met by strong resistance from local residents, leading to clashes during which security forces fired live bullets, killing at least one teenager and wounding several others.

The use of emergency powers during the Ebola crisis was perceived by many as an attempt to suppress dissent from the opposition and civil society, many of whom criticised the government for managing the situation poorly and squandering international aid money intended to fight the epidemic. In October 2014, a request by the president to extend the state of emergency and to curtail certain fundamental rights was condemned by the opposition and the civil society movement, and subsequently rejected by the legislature.

In response, the president issued Executive Order Number 65, banning mass movements of people, particularly in relation to the senate elections campaign. According to the government, the objective of the executive order was “to strengthen the efforts of the Government of Liberia to contain the spread of Ebola, protect the security of the State, maintain law and order, and promote peace and stability in the country”.<sup>14</sup>

## ALL ELECTION-RELATED ACTIVITIES – INCLUDING MASS RALLIES AND QUEUING TO VOTE – WERE AGAINST THE PUBLIC HEALTH MEASURES NEEDED TO STOP THE HUMAN-TO-HUMAN TRANSMISSION OF THE VIRUS

This brought to the fore important questions on the use of emergency powers in crisis situations in Liberia. The Constitution of Liberia provides in Article 86(b) that “[a] state of emergency may be declared only where there is a threat or outbreak of war or where there is civil unrest affecting the existence, security or well-being of the Republic amounting

to a clear and present danger”. The key issues during the contention between the government and the opposition were the curtailment of fundamental rights such as free movement and free expression, and freedom of association and religion. Many thought these were excessive and untenable in relation to the fight against Ebola.

### ***Constitutional Crisis on Senate Elections***

Senate elections, set to be held on 14 October 2014 in line with the constitution, could not be held in Liberia due to the state of emergency put in place to contain the spread of the Ebola virus. All election-related activities – including mass rallies and queuing to vote – were against the public health measures needed to stop the human-to-human transmission of the virus. With a marked decrease in the number of Ebola cases by November 2014, stakeholders – including the National Election Commission (NEC), political parties and civil society organisations – held consultations and rescheduled the elections for 16 December 2014. However, some political actors challenged the constitutionality of this move in the Supreme Court, which led to a stay order. Their contention was that since the date set by the constitution for the elections had passed without the elections being held, no institution (not even the



GALLO IMAGES/REUTERS/STRINGER

**Liberian troops set up Ebola roadblocks and stopped public access to some of the worst-hit towns after the country declared a state of emergency to tackle the worst outbreak of the disease on record (August 2014).**



**In Freetown, Sierra Leone, women wash their hands and get their temperature checked at a community check point, before entering a neighbourhood (22 December 2014).**

government) had the authority to set a date for elections under the constitution; thus, they demanded what they called a “sovereign national conference” of the citizens.<sup>15</sup> The Supreme Court subsequently ruled in favour of the NEC, and the senate elections were finally held on 20 December 2014.

Liberia was headed for an unprecedented constitutional crisis if the senate elections were not held before the constitutional tenure of the incumbent senators expired in January 2015. Considering the mounting political and social tensions during the height of the epidemic – occasioned by street protests, excessive use of force by security forces and bickering among politicians – it could easily be predicted that this could have led to prolonged political instability, if not a violent crisis, in Liberia.

### **Conclusion**

The Ebola epidemic of 2013–2015 has been the most devastating tragedy to have hit the three countries of the Mano River Basin since the civil wars in Liberia and Sierra Leone. As mentioned, the disease not only infected and killed people in the Mano River Basin, but had the greater impact of affecting peace and stability in the subregion, as was seen in Liberia. Both the Ebola epidemic and the attendant political crises are symptomatic of continued state fragility and weak capacity in Liberia, Guinea and Sierra Leone.


Billions of dollars of aid money have been spent in the name of supporting state-building in the three countries for over a decade. Unfortunately, the Ebola epidemic revealed that the massive investment of international aid money and national expenditures from government budgets have done little to support functional state institutions. With a focus on physical security – police and military – the international community and the national governments paid little attention to human security issues such as investing in healthcare, education and youth empowerment, in the last decade of peacebuilding in the region.

### **THE EBOLA EPIDEMIC OF 2013–2015 HAS BEEN THE MOST DEVASTATING TRAGEDY TO HAVE HIT THE THREE COUNTRIES OF THE MANO RIVER BASIN SINCE THE CIVIL WARS IN LIBERIA AND SIERRA LEONE**

The Liberian experience of the Ebola epidemic is highly illustrative of the inability of the states in the region to deliver on their constitutional promises and to maintain political and social stability while responding to non-military or non-security threats. Post-Ebola recovery measures in the subregion must pay keen attention to key sectors of the state

and society. Practical actions are needed beyond the promises of economic growth and development through the much-vaunted models of “trigger-down” economic policies that restrict governments to certain policies.

## POST-EBOLA RECOVERY MEASURES IN THE SUBREGION MUST PAY KEEN ATTENTION TO KEY SECTORS OF THE STATE AND SOCIETY

Liberia, the hardest hit of the three affected countries, has the opportunity to recreate itself through its ongoing constitutional reform exercise. It is important that its current reform focuses on building a democratic and decentralised governance system with emphasis on devolving authorities and resources for local service delivery capacity, particularly in the social service sector: health, education and youth empowerment. While post-Ebola recovery efforts in Liberia need to focus more on improving the ravaged healthcare sector, democratic reforms to ensure political and financial accountability of state actors are critical to strengthen the capacity of the Liberian state in all areas, particularly in delivering basic social services and human security, which has received very little attention over the years of peacebuilding and state-building. 

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# WHAT ARE THE HUMAN RIGHTS OBLIGATIONS OF UNMISS TO THOSE SHELTERING ON ITS PROTECTION SITES?

BY **CONOR FOLEY**

## Introduction

There are currently around 200 000 civilians sheltering in and around bases of the United Nations Mission in South Sudan (UNMISS), who are being protected in accordance with its mission mandate.<sup>1</sup> The establishment and defence of these sites have saved thousands of lives, and can be contrasted with the failures of the United Nations (UN) to protect people from genocide in Rwanda and Srebrenica in the 1990s. This article provides an overview of the development of UNMISS, how it has responded to the outbreak of civil war, and its potential

legal responsibilities towards those sheltering on its protection of civilian (PoC) sites.

South Sudan came into existence in July 2011, after its people voted overwhelmingly for independence the previous January. UNMISS was created in the same month by the UN Security Council, which gave UNMISS a mandate to protect civilians under its Chapter VII powers. In June 2012, the Government of South Sudan argued that it would be

**Above: UNMISS was created in July 2011 once South Sudan gained its independence.**

“inappropriate” to renew the mandate under Chapter VII, as the government had taken responsibility for the safety and security of its own citizens. The government’s argument was rejected, but benchmarks for progress were agreed on towards an exit strategy for UNMISS. PoC has featured in all of UNMISS’s mission reports, although its initial focus was advocacy, maximising information flow, the provision of good offices and urging the government to deploy additional security forces when necessary.

South Sudan’s transition to independence was fraught with skirmishes on the new international border with Sudan and internal clashes between government troops and rebel militia. Hundreds of thousands of people were displaced from their homes during 2011 and 2012, and there were repeated violations of international human rights law and international humanitarian law (IHL) by both sides.<sup>2</sup> Thousands sought refuge in UNMISS military compounds, particularly in Jonglei State, where much of the violence occurred. UNMISS also suffered a series of attacks by rebel groups in 2012 and 2013, as well as ongoing harassment, threats, physical assaults and attempts to seize property by government forces. In December 2012, government troops shot down a UNMISS helicopter, after apparently mistaking it for a Sudanese military one.<sup>3</sup>

## Civil War

Simmering divisions within the leadership of the now-ruling Sudan People’s Liberation Movement (SPLM) erupted into a full-scale conflict in December 2013, which resulted in the death of 10 000 people in the first few months and displaced over a million people.<sup>4</sup> President Salva Kiir Mayardit claimed to have foiled a coup attempt, while his opponents accused him of launching a dictatorial purge. The Sudan People’s Liberation Army (SPLA) quickly fractured and both sides committed widespread massacres, often based on grounds of ethnic division. By December 2014, the UN Security Council referred to the civilian death toll as being in the “tens of thousands”.<sup>5</sup>

As the fighting spread, more civilians sought protection at UNMISS bases. By the end of 2014, it was estimated that there were 100 000 people sheltering at UNMISS bases. By May 2015, this number had increased to around 118 000 people and, by August 2015, there were an estimated 200 000 people at what became known as PoC sites.<sup>6</sup> Civilians had sought shelter at UNMISS bases before this crisis, and the mission had already developed guidelines for managing such situations. The guidelines stated that such protection should be a last resort and a temporary solution before more sustainable protection and assistance could be provided.



UN PHOTO/UNMISS

**Residents seek refuge at UNMISS facilities following the outbreaks of violence across the country. UNMISS peacekeepers from all contingents have been assisting displaced civilians by providing protection, building sanitation facilities and offering medical support.**



**UNMISS officers provide water to civilians fleeing fighting and seeking refuge at a UNMISS compound on the outskirts of Juba (December 2013).**

The outbreak of civil war, however, caught UNMISS by surprise, and the scale of the influx of people overwhelmed it. Nevertheless, as the International Crisis Group (ICG) noted:

Within hours of the outbreak of conflict, civilians began arriving at UNMISS bases seeking protection. The speed with which the fighting spread required immediate action and UNMISS senior leadership took the risky but right decision to open its gates.... Mission staff are not humanitarians and did not have access to humanitarian supplies, such as tents, food and materials to build latrines, leading to dire conditions in some of the bases. Acknowledging the logistical and political difficulties, there is no question UNMISS' action saved – and continues to save – many thousands of civilian lives.<sup>7</sup>

UNMISS bases came under attack in several places, particularly in Jonglei State. Two peacekeeping soldiers and a civilian aid worker were killed at one UNMISS base, some bases were hit in crossfire and UNMISS helicopters were deliberately shot at on some occasions.<sup>8</sup> In April 2014, the UNMISS base in Bor was stormed by an armed group who attacked the internally displaced persons (IDPs) inside the base with axes, handguns and automatic weapons.

UNMISS troops eventually opened fire, and the attack was stopped after 48 IDPs and three attackers were killed.<sup>9</sup> As a consequence of these various attacks, UNMISS evacuated two of its bases. At other bases, Ugandan armed forces provided protection by patrolling the outer perimeters.

#### **Protection of Civilian Sites**

Towns were frequently captured and then recaptured by opposing sides during the initial months of the conflict, leading to different groups seeking UNMISS's protection. Many of those who sought shelter had previously played an active role in the conflict, but UNMISS consciously defined "civilians" in adherence to IHL rules as including armed actors who had laid down their weapons.<sup>10</sup> As the mission's senior PoC advisor noted:

A significant proportion of the people seeking refuge were former combatants. By relinquishing their weapons and uniforms they became civilians and eligible for protection. However, there was always the risk of these individuals rejoining the fighting, and UNMISS was criticised by both sides in the conflict for harbouring potential adversaries. A clear "no arms on UN premises" policy was implemented. While screening was conducted by UN police at entry and exit points to ensure that



**A UNMISS medical team provides medical assistance to South Sudanese civilians in Juba (December 2013).**

weapons did not enter the PoC sites, this was not foolproof and some weapons were brought in.<sup>11</sup>

Both sides continued to accuse UNMISS of sheltering “criminals” and “enemies”, and senior political and military leaders stated that they considered these people to be legitimate targets for attack. Over the course of 2014, the mission developed guidance on preserving the civilian character of its PoC sites and stated that it would not admit additional individuals to its premises where there was no “current fighting or threat of violence in the area”. Land was also acquired next to UNMISS bases, where people could be accommodated on a more sustainable basis. Nevertheless, *Médecins Sans Frontiers* (MSF) noted that living conditions within these camps was “abysmal, with water and food in continuing short supply, and most people confined to low-lying areas, which have become swamps of infestation and disease”.<sup>12</sup> It warned that people in the camps “suffer from violence, malnutrition and cholera”, with “wires and barricades designed to keep violence out, and the people inside”, and that the mission appeared to have accepted a new “definition of protection, which appears to apply in only the most narrow sense”.<sup>13</sup>

A Security Council resolution in May 2014 gave UNMISS a new mandate, focusing on its PoC tasks.<sup>14</sup> In its November 2014 report, the mission stated that UNMISS police had “adjusted its command structure and deployment in the sites” to “enhance safety and security”.<sup>15</sup> It further noted that “UNMISS also continued separating suspects with regard to security-related incidents in holding facilities until their referral to community-led informal mitigation and dispute resolution mechanisms”.<sup>16</sup> The mission stated that it had “submitted a draft memorandum of understanding to the Ministry of Justice concerning the transfer of cases and suspects to national authorities”. In February 2015, it was reported that the World Food Programme (WFP) had been forced to temporarily suspend food distribution at one site after humanitarian workers were assaulted.<sup>17</sup> In April 2015, it was reported that:

Inter-communal tensions, community leadership struggles, youth gang violence and threats against humanitarian service providers and UNMISS staff continue to pose serious challenges in many of the UNMISS protection sites. During the reporting period, a total of 410 security incidents were reported, including incidents of murder, theft, assault, domestic violence and public disorder. Over 22 UNMISS police were injured in



the process of maintaining security at the protection of civilians site in Juba, while another six were injured at other sites, during the month of February. On 9 February, clashes between youth groups resulted in the death of one youth at the Bentiu site. On 24 March, similar youth violence led to the explosion of a hand grenade inside the protection site, injuring 10 people. Of particular concern is sexual, gender-based and domestic violence, including the exploitation of young girls and women, by male internally displaced persons.<sup>18</sup>

The mission responded by “streamlining referral pathways with humanitarian protection partners to provide efficient emergency response services to victims of sexual, gender-based and domestic violence”, as well as implementing “conflict transformation trainings and peace dialogues” at certain sites. It also “continued to administer four holding facilities for the temporary isolation of internally displaced persons suspected of having committed serious crimes”.<sup>19</sup>

#### **The Human Rights Obligations of UN Missions**

International human rights jurisprudence has developed a fairly clear definition of the “positive obligation” to protect the right to life and physical integrity. An obligation arises if the appropriate authorities knew, or ought to have known at the time, of the existence of a real and immediate risk and failed to take measures within the scope of its powers which, judged reasonably, might be expected to have avoided or ameliorated the risk.<sup>20</sup> It also imposes a positive obligation

on the appropriate authorities to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts, even when carried out by private persons or entities.<sup>21</sup>

#### **THE UN IS NOT A PARTY TO ANY HUMAN RIGHTS TREATIES, AND ITS CHARTER SPECIFIES THAT ITS PROVISIONS TAKE PRECEDENCE OVER ALL OTHER INTERNATIONAL TREATIES**

It is increasingly recognised that international human rights law may be concurrently applicable with IHL.<sup>22</sup> While there is continuing debate about the extent of its extraterritorial application, states are widely considered to have an obligation to respect and ensure respect for their provisions to anyone within their power or effective control, even if not situated within their territory.<sup>23</sup> The UN is not a party to any human rights treaties, and its charter specifies that its provisions take precedence over all other international treaties.<sup>24</sup> There is also no mechanism to judicially review the Security Council’s actions and the legal immunities that cover UN missions – which makes it extremely difficult to scrutinise their records for compliance with international human rights law.<sup>25</sup> Nevertheless, a growing number of reports, resolutions and policy statements – such as the Human Rights Due Diligence Policy and Human Rights Up Front – do refer to the UN’s responsibility to protect human rights.



UN PHOTO/UNMISS

**As people continue to seek refuge at UNMISS bases, the mission attempts to step up provision of basic health facilities: the Indian battalion builds latrines on the compound grounds.**



**The United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief visits South Sudan to see first-hand the devastating humanitarian consequences of the conflict as well as efforts made by aid organisations to respond to escalating needs (July 2015).**

Both Dutch and Belgian courts have upheld claims that their troops on UN peacekeeping missions in the 1990s failed to protect some of the victims of the genocides in Rwanda and Srebrenica.<sup>26</sup> Challenging individual troop-contributing countries for alleged violations could lead to a potential crisis in peacekeeping, because states that are party to strong regional human rights mechanisms may become even more reluctant to participate in peacekeeping missions. A better solution would be for the UN itself to define how it considers international human rights law applicable to its peacekeeping missions, perhaps through the issuing of a Secretary General's bulletin, as was used to define the applicability of IHL.<sup>27</sup>

#### **UNMISS's Human Rights Obligations**

In February 2015, the mission reported: "Since the establishment of the holding facilities in May 2014, a total of 856 offenders have been temporarily detained. Most of the offenses are being handled under community-led informal mitigation and dispute resolution mechanisms. In isolated instances, offenders were expelled from the protection sites."<sup>28</sup> The absence of a commonly agreed framework on the transfer of suspects to national authorities poses considerable challenges to the mission's ability to operate the holding facilities in accordance with international standards. By April 2015, there were a total of 63 "suspects" being held in these facilities, but UNMISS had "yet to agree with the

Government on a framework for the transfer of detainees to national authorities".<sup>29</sup> Some detainees had been released "and their cases handled under community-led informal mitigation and dispute resolution mechanisms".<sup>30</sup> The report also stated that "nine offenders representing a significant threat to UNMISS staff and their communities were expelled from the protection site, after a detailed human rights risk assessment confirmed that they were not under threat of violence outside the site".<sup>31</sup>

In June 2015, the mission reported that "South Sudanese armed forces may have committed widespread human rights abuses, including the alleged rape and immolation of women and girls" and "killing civilians, looting and destroying villages and displacing over 100,000 people".<sup>32</sup> The UN Children's Fund (UNICEF) also reported that boys had "been castrated and left to bleed to death", and that "children were bound together before having their throats slit", while "others had been thrown into burning buildings".<sup>33</sup> The South Sudanese authorities dismissed any allegations of wrongdoing, and stated that they would welcome investigations. UNMISS responded that its human rights officers had been routinely denied access to locations of interest by the SPLA, and the head of mission stated: "Revealing the truth of what happened offers the best hope for ensuring accountability for such terrible violence and ending the cycle of impunity that allows these abuses to continue."<sup>34</sup>



**Salva Kiir, president of South Sudan, signs the agreement on the resolution of the conflict in South Sudan at a ceremony held in Juba (26 August 2015).**

Various attempts have been made to solve the conflict through diplomatic means, backed up by the use of targeted sanctions and, in August 2015, both sides were persuaded to sign a peace agreement, which was welcomed by a Security Council presidential statement.<sup>35</sup> The agreement has, however, broken down repeatedly and, by April 2016, there were still regular reports of continuing clashes.<sup>36</sup> Meanwhile, hundreds of thousands of IDPs are living in appalling, squalid conditions while being in the “effective control” of two UN missions. What rights and freedoms is the UN obliged to secure for them?

### **Conclusion**

If it is accepted that UN peacekeeping missions do have obligations under international human rights law, a fairly clear case can be made that a PoC mandate provides a positive obligation to protect the right to life and physical integrity. However, human rights are often declared to be “universal, indivisible, interdependent and interrelated”, and some argue that its protection “cannot and must not be reduced to protection against violence” but should also include rights such as food, medicine and shelter.<sup>37</sup>

For protection to be effective, there must be a common understanding of who should be protected, from what, by whom, to what extent and until when. It is clearly impossible for peacekeeping soldiers deployed in a conflict or post-conflict environment to provide protection against *all* threats of violence to *all* people at *all* times, but the positive

obligations in international human rights law do take account of these limitations. As discussed previously, national courts have already ruled that soldiers who abandoned civilians sheltering under their protection to the genocides in Rwanda and Srebrenica, contributed to the violation of the right to life of the victims. There seems to be no reason, in principle, why the UN should not be under a similar obligation.

The “right to humanitarian assistance”, however, is less firmly based in international law, and there are both principled and practical reasons for maintaining the distinction between PoC and rights-based protection. While the “right of humanitarian access” is firmly established in both IHL and international human rights law, the delivery itself should be carried out by agencies bound by humanitarian principles – including neutrality, which could be compromised by too close an association with a UN mission with a PoC mandate.

Where the UN forcibly detains people, however – as is currently the case with UNMISS – the safeguards contained in international human rights law do appear to be of obvious relevance. It is not clear from UNMISS mission reports that detainees are being held in conformity with international standards, including basic protections against arbitrary detention and ill-treatment. While establishing an independent review mechanism and inspections regime for such detentions might have cost implications, it is difficult to see how the UN can justify failing to put such safeguards in place. ▲

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# THE PLACE FOR AMNESTY IN ZIMBABWE'S TRANSITIONAL JUSTICE PROCESS

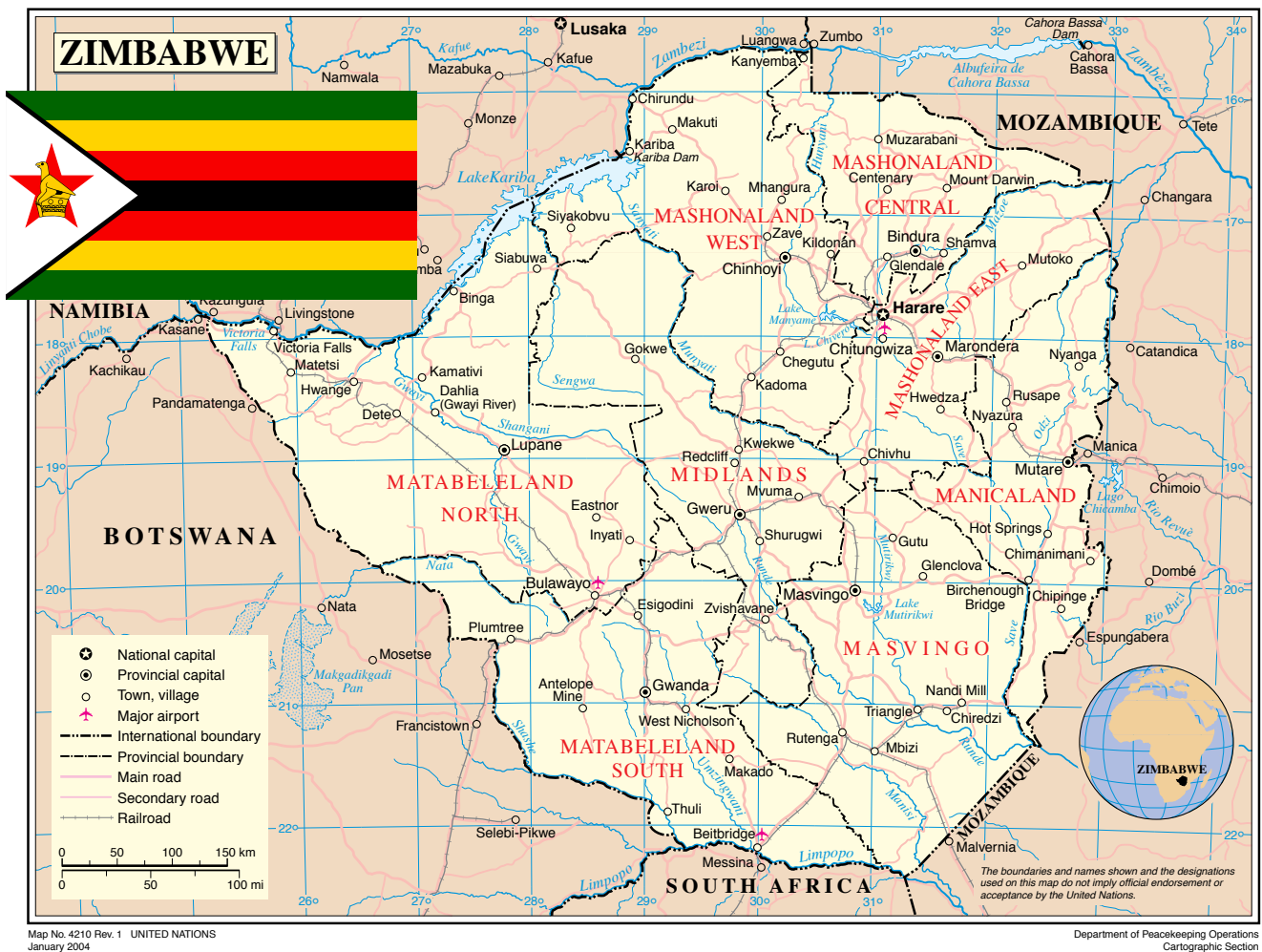
BY **EDKNOWLEDGE MANDIKWAZA**

## Introduction

Zimbabwe's transition to a peaceful nation remains at a crossroads, as the government has failed to put in place viable transitional justice mechanisms. The southern African country experienced a series of conflict episodes before and after its independence in 1980, but there has never been a viable nationally adopted process that facilitates meaningful national healing, reconciliation and integration. Zimbabwe adopted a new constitution in 2013, providing for the establishment of a National Peace and Reconciliation Commission (NPRC) that marks the government's interests to address past conflicts and maps a new path for

peacebuilding. Essentially, conversations and interventions on transitional justice, truth-telling, reconciliation, justice and restoration are already taking shape. However, within the current transitional justice discourse among civil society actors, the government and citizens, the notion of "amnesty" as part of the broad transition dialogue remains absent. This article therefore attempts to explore the place for amnesty in Zimbabwe's transitional justice process.

**Above: Zimbabwe's president, Robert Mugabe, signs the new constitution into law in Harare (22 May 2013).**



Following the publication of the NPRC Bill on 18 December 2015, and the subsequent swearing in of NPRC members by President Robert Mugabe in early 2016, the process of national healing and reconciliation can now officially begin in Zimbabwe. The environment in which the process is taking place is, however, replete with stumbling blocks and drawbacks – chief of which is political interference and a glut in funding. Thus, much of the “transitional justice” at present is in the form of discussion and dialogue, especially among civil society organisations and opposition political parties. Of concern in these dialogues is the absence of amnesty as part of the transitional justice process. Currently, much of the dialogue places emphasis on truth-telling, criminal justice, reparations and reconciliation. Commenting on the National Transitional Justice Working Group (NTJWG), which was established to coordinate the process, one observer remarked:

The notion of amnesty in exchange for truth-telling was rejected by a large majority of NGOs, with the exception of church-based groups, who however conceded that their constituencies resisted amnesty.<sup>1</sup>

Yet amnesty is a pivotal pillar of transitional justice – as it has been in South Africa, where the truth was exchanged for amnesty from prosecution.<sup>2</sup> It is this incentive that encourages the telling of truth, thereby leading to reconciliation. There is no use for perpetrators to voluntarily come forth and tell what they did if they do not hope to get anything out of it, or if they will be prosecuted or subjected to punishment.

## CURRENTLY, MUCH OF THE DIALOGUE PLACES EMPHASIS ON TRUTH-TELLING, CRIMINAL JUSTICE, REPARATIONS AND RECONCILIATION

At the moment, the transitional justice process in Zimbabwe is a political minefield as there has not been any shift in power; hence, there cannot be meaningful transitional justice without transition. It is therefore incumbent upon those who seek to address the past to cajole and persuade perpetrators to come forward. Admittedly, this cannot be

expected to commence easily, given that those implicated in gross human rights violations would want unconditional amnesty without truth-telling.<sup>3</sup>

### Conceptualising Amnesty

Amnesty refers to the act of forgiving someone or a class of persons for past offences. The pardoning is particularly done for political criminals, and can be granted either before trial or after conviction. While the term can be applied in a variety of settings, amnesty within the context of transitional justice has traditionally been used as a political tool of compromise and reunion following war and conflict. The emergence of amnesty is a result of countries absolving those people involved in crimes against humanity and gross human rights abuse to avoid their prosecution, as a way of encouraging the restoration of democracy.<sup>4</sup> Facilitating amnesty can be a necessity, especially under circumstances where the incumbent political leaders and hardliners are holding back transitional justice for fear of retribution, arrests and loss of material benefits. This means amnesty in itself can predictably curb repression from incumbent political leaders and hardliners afraid of retribution.

Amnesty can be distinguished from other pardons. A pardon is a tool that exempts a convicted criminal or criminals from serving his, her or their sentence(s), in whole

or in part, without expunging the underlying conviction by an Official Act.<sup>5</sup> Amnesty, on the other hand, refers to the broader transitional justice framework – a set of judicial and non-judicial measures targeted at addressing the legacies of human rights violations.

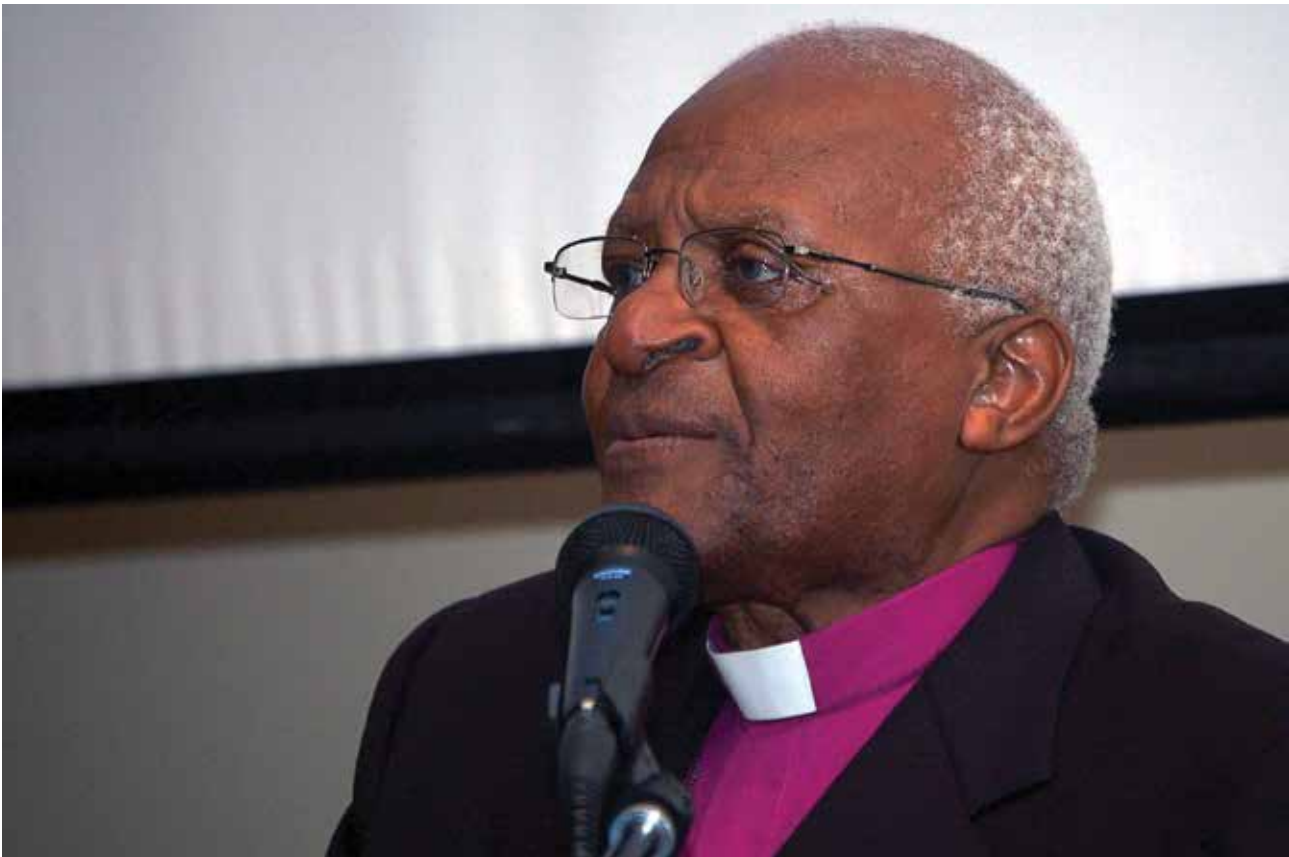
**WHILE THE TERM CAN BE APPLIED IN A VARIETY OF SETTINGS, AMNESTY WITHIN THE CONTEXT OF TRANSITIONAL JUSTICE HAS TRADITIONALLY BEEN USED AS A POLITICAL TOOL OF COMPROMISE AND REUNION FOLLOWING WAR AND CONFLICT**

In Zimbabwe, amnesty has previously been applied through the Amnesty (General Pardon) Act [Chapter 9.03]. This Act, which authorises discontinuance of prosecution, is popularly known as the presidential pardon, as it is exercised by the president.<sup>6</sup> The Amnesty (General Pardon) Act authorises pardoning of any offence committed in good faith before or after 1980, and any other offences specified in the Act. Whilst Zimbabwe had several declarations of amnesties that benefited perpetrators of gross human rights violations, those processes have neither promoted



GALLO IMAGES/ AFP/JEKESAI NJIKIZANA

**Female prisoners, incarcerated at the Chikurubi prison in Harare, await their release following a presidential pardon (17 February 2014).**



**In South Africa, truth-telling and amnesty were important parts of transitional justice.**

transitional justice, national healing and reconciliation nor proved to be developmentally democratic. Alex Magaisa observes that Zimbabwe's presidential amnesties rewarded villains and perpetuated violence, gross human rights violations and unbearable political corruption.<sup>7</sup> For example, security forces who presided over the massacre of over 20 000 people in the Matabeleland and Midlands regions of Zimbabwe were granted amnesty in 1988 through Clemency Order No. 1 of 1988.

## AMNESTY IS NOT A SILVER BULLET OR MAGIC WAND TO PROMOTE TRANSITIONAL JUSTICE

Whether democracy and sustainable peace in Zimbabwe can be reached through amnesty requires a thorough interrogation. Controversially, amnesty can be viewed as the protection of those who murder, torture and perpetuate human rights violations. In Afghanistan, there was an outcry when its amnesty law was established. Citizens complained that it did not benefit the nation, but rather protected and benefited those who had committed war crimes, and actually inspired others to commit the same kind of crimes. In South Africa, amnesty played a significant part in the Truth and Reconciliation Commission (TRC), but the majority of the

black population who suffered under apartheid remain disillusioned.

Amnesty is not a silver bullet or magic wand to promote transitional justice. Instead, it can generate destabilising dissent and, to a greater extent, defeat the purpose of justice and the justice delivery system. To make matters worse, amnesty neither guarantees an end to impunity, gross human rights violations and torture nor the non-recurrence of such violations.

While amnesty is practised by states, the Rome Statute that established the International Criminal Court (ICC) prohibits countries from supporting amnesty for crimes against humanity (international crimes, including genocide and war crimes). This suggests that within the ambit of international law, some offenders should face the full wrath of the law, regardless of the benefits that may come with the amnesty exercise.

### **The Practice of Amnesty in Zimbabwe**

The granting of amnesty in Zimbabwean history is not new. However, what is uncommon are the motives behind each general pardon granted. From the colonial era to independent Zimbabwe, amnesties – also known as presidential pardons, prerogatives of mercy or presidential clemency – have been pronounced several times: 1975, 1979/80, 1988, 1990, 1993, 1996, 2000, 2001 and 2014.





**Supporters of Zimbabwe’s Movement for Democratic Change march in the streets of Harare demanding justice against the perpetrators of political violence.**

#### Amnesties in Zimbabwe<sup>8</sup>

Year	Amnesty
1975	The Indemnity and Compensation Act granted amnesty to the police force, civil service and Central Intelligence Organisation (CIO) members for offences committed in the past (in retrospect) and for those anticipated.
1979/ 1980	Amnesty Ordinances of 1979 and 1980 were granted by the transitional government at the sealing of the Lancaster House Agreement.
1988	General Notice (GN) 257A/1988 granted amnesty to “dissidents”, collaborators and members of the Zimbabwe African People’s Union (ZAPU). <sup>9</sup>
1990	General amnesty, repeating GN257A/88 to include the state’s uniformed forces, who had been responsible for Gukurahundi in the Matabeleland and Midlands provinces in Zimbabwe from 1982 to 1987. Gukurahundi is the name given to the bloody military repression of opposition to the government immediately after Zimbabwe’s independence in 1980. This repression led to over 20 000 deaths, affecting mainly the Ndebele tribe in Zimbabwe’s Midlands and southern provinces.
1993	GN111C was a general amnesty for people arrested before 31 March 1980 and prisoners serving less than 12 months.
1996	GN362A was a general amnesty for life sentences before 31 January 1981, infanticide offenders and determinate sentences.
2000	GN457A was a general amnesty for politically motivated crimes (liability pardon and remission of sentences). However, the names of those pardoned were never published.
2014	Close to 2 000 inmates were granted pardon – reportedly due to hunger and service delivery pressures in the country’s prisons.

It is important to note that the peace which Zimbabwe enjoyed between 1980 and 1998 was due to two amnesties: that contained in the Lancaster House Agreement,<sup>10</sup> and that which marked cessation of hostilities between the Zimbabwe African National Union (ZANU) and ZAPU and culminated in the signing of the Unity Accord in December 1987. The Unity Accord led to the merging of ZANU and ZAPU to establish the Zimbabwe African National Union – Patriotic Front (ZANU-PF). These amnesties were clear post-independence political exonerations. Unfortunately, the absolutions technically united the political elites, leaving the grassroots divided.

The amnesty in 2000 (GN457A) benefited ZANU-PF supporters who were implicated in unleashing politically motivated violence, arson, the burning of homes and the intimidation of opposition supporters.<sup>11</sup> This amnesty could have been perceived as a sign that the country was shielding human rights violators from prosecution. Such insulation from legal and criminal justice has consequently further exacerbated the culture of violence in Zimbabwe. Geoff Feltoe agrees that the practice of amnesty in Zimbabwe has been partisan and has engendered a culture of impunity.<sup>12</sup>

Violence also increased with the implementation of the fast-track land reform policy, where many white farmers

and their workers were killed, tortured and harassed. Few of these instigators of violence were tried and charged, as most of them were granted amnesty under the Clemency Order of 2000. From this perspective, the practice of amnesty can be less attractive if supporters of one hegemonic political party (such as ZANU-PF) enjoys state amnesty without contrition. Thus, any future partisan amnesty will unequivocally frustrate genuine and noble efforts towards conflict transformation and peacebuilding.

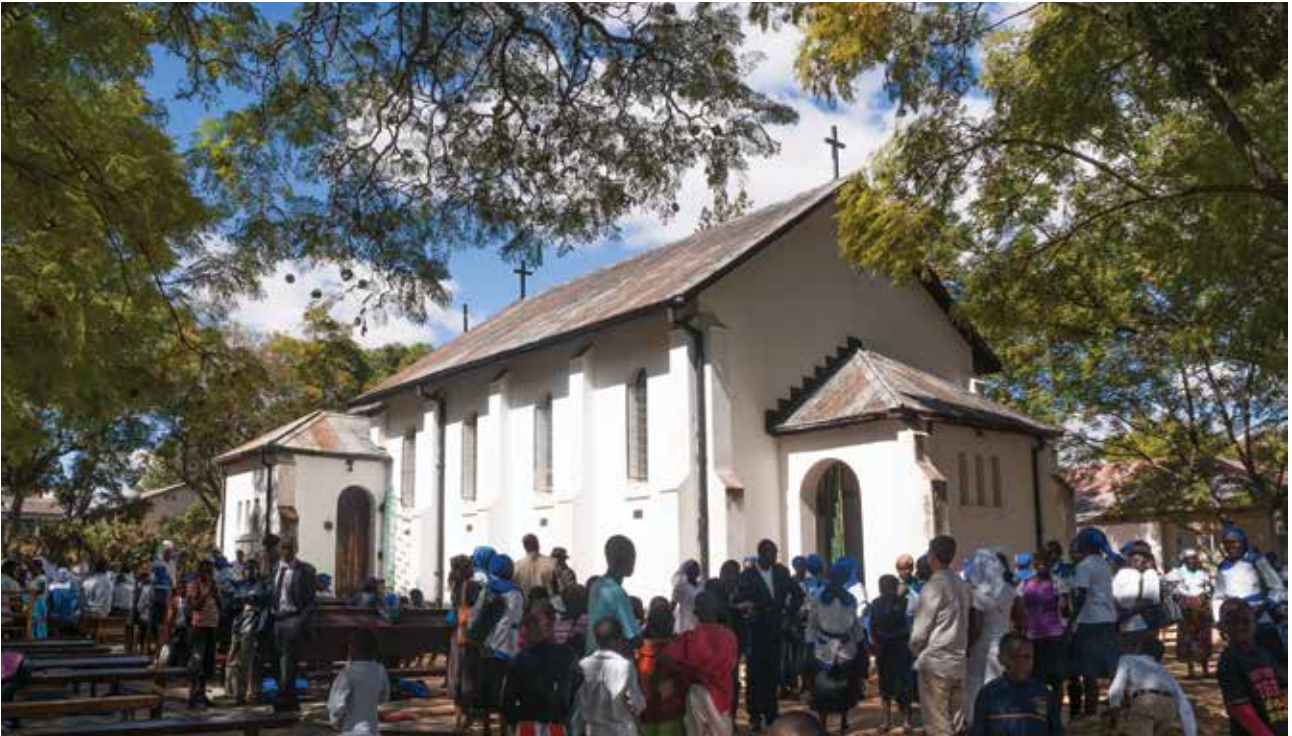
### Going Forward

Transitional justice remains an outstanding item on Zimbabwe's socio-economic and political reform agenda. The objective of exploring options for amnesty should be to "isolate the hard-line insurgents from the communities that support them ideologically, financially, or logistically".<sup>13</sup> Although civil society organisations reject the idea of amnesty as part of a broader framework of the transitional process, there is a need to appreciate the practical realities that can limit certain governments (such as the ZANU-PF government) in implementing specific justice measures. Therefore, as Bryan Sims writes: "The demand for criminal justice is not an absolute, but must instead be balanced with



GALLO IMAGES/REUTERSHOWARD BURDITT

The amnesty in 2000 benefitted supporters who were implicated in unleashing politically motivated violence.



**Zimbabwe can facilitate amnesty by consulting diverse stakeholders – faith-based organisations, student bodies, churches, academia, individuals, independent commissions, traditional leadership, political parties and various ministries – to initiate dialogue along issues of amnesty, justice and reconciliation.**

the need for peace, democracy, equitable development and the restitution of the rule of law.”<sup>14</sup>

Two options lie ahead: Zimbabwe can pursue either conditional or unconditional amnesty as part of its political transition process towards sustainable peace. Conditional amnesty simply allows pardoning when the perpetrator either offers the truth about the past or offers reparations, while unconditional amnesty allows forgiving without subjecting the beneficiaries to justice and truth-telling. Without interrogating the merits and demerits of each option, the careful use and balance of either option depends on several factors. Most importantly, the transitional and peacebuilding mechanism that Zimbabwe adopts should not close or freeze some conflict episodes without offering justice. History is littered with cases where the rights of victims to seek redress have been traded for amnesty, but without solving conflict and sociopolitical tensions. Therefore, a thoughtful, practical analysis on the validity of any possible amnesty in Zimbabwe, which places salience on the careful balance of a truth-for-amnesty formula, is a necessity.

Grassroots-driven amnesty can facilitate sustainable political transition, as it allows collective forgiveness and horizontal unity across the political divide. This means Zimbabwe can facilitate amnesty by consulting diverse stakeholders – including non-governmental organisations

(NGOs)/civil society institutions, community-based and faith-based organisations, student bodies, churches, academia, individuals, independent commissions, donor agencies, traditional leadership, political parties and various ministries – to initiate dialogue along issues of amnesty, justice and reconciliation. A multi-stakeholder approach allows for collective decision-making processes that evolve with democratic principles.

Since amnesty – whether conditional or unconditional – does not guarantee non-recurrence and the repentance of the pardoned elements, there is a need to understand the desires and interests of those likely to receive amnesty. Extensive empirical research can assist political players, including policy-makers and stakeholders, to determine the feasibility of an amnesty programme in the country. However, such studies might be difficult to embark on, given the country’s current volatile and sensitive political context. A study carried out by Freedom House and the Mass Public Opinion Institute (MPOI), entitled *Change and “New” Politics in Zimbabwe*,<sup>15</sup> agrees that the volatility of the Zimbabwean political landscape is not conducive for research on sensitive topics. Therefore, good security mechanisms may be of great importance if this option is taken into consideration.

Facilitating dialogue on transitional justice while deliberately placing amnesty as part of the broader

transitional process can be helpful. Civic society institutions and democracy-supporting organisations working on peacebuilding and transitional justice may need to open the space for engagement and discussion with state, society, local stakeholders and global actors. This will help in articulating a shared national vision on peacebuilding and transitional justice that transcends what South African scholar, Adam Habib, terms the “dialogue of the deaf”.<sup>16</sup> This refers to a situation where one party is not responsive to what the other is saying, leading to conflict and disengagement. In other words, civil society organisations need to utilise what John Gaventa, through the Power Cube Matrix,<sup>17</sup> terms “spaces of engagement” to claim, initiate and demand participation towards effective political transitional processes.

There is need to advocate for victim-centred amnesty legislation and amnesty hearings that are victim-friendly, to enable victims to exercise their inalienable right to seek justice and redress. However, this can be best realised if democracy-supporting institutions and the state create agency for civic actors and promote citizen participation in public affairs. How can this succeed? NGOs should continue working with the government whilst maintaining some modicum of autonomy (although this is difficult, given the challenging state–civil society interactions in Zimbabwe). Peace-related organisations should join forces with other pro-democracy movements and push for a national reconciliation process that considers the efficacy and feasibility of amnesty in Zimbabwe. In addition, the victim-centred legislation should be protected from abuse by political entrepreneurs, who may want to exploit it for political expediency.

## Conclusion

This article concludes that the missing link in the Zimbabwe national peace and reconciliation debate is a lack of inclusion of amnesty in the transitional justice discourse. While amnesty can facilitate the evasion of justice and perpetuate gross human rights violations and crimes against humanity, it can be deliberately effected to induce smooth political transition. Political hardliners guilty of crimes against humanity may decide to step down from power once their future safety is guaranteed. Nonetheless, there is need to balance justice and amnesty to avoid depriving victims of violence from accessing justice. Together with other transitional justice processes, a truth-for-amnesty formula can be a reasonable approach in the national healing discourse. ▲

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# UNDERSTANDING CIVIL MILITIA GROUPS IN SOMALIA

BY LUCAS MAHLASELA MAKHUBELA



has failed to meet the basic functions associated with the Westphalian state system<sup>1</sup> of providing common goods to its population, developing and promulgating laws of the country, and providing security for its population through the use of legitimate force.<sup>2</sup> The failure, collapse and eventual disintegration of the Somali state since 1991 facilitated the emergence of civil militia groups, often aligned to various political clan groupings. These militia groups operate under the pretext of providing security to their clansmen and, in the process, have created what scholars describe as a security dilemma, where clans arm themselves in anticipation of attacks by rival clans.

The clan political differences are used as instruments of conflict perpetuation by civil militia leaders in their quest to plunder what remains of Somalia's resources. This article focuses on the instrumentalist school of thought, and concludes that clan differences are used by

## Introduction

Somalia has experienced state failure, collapse and disintegration since the fall of the Mohamed Siad Barre military regime in 1991. Since then, the country has been the subject of numerous peace processes aimed at the creation of a central government, without any success. This absence of a central government means that Somalia

civil militia groups as instruments of conflict perpetuation in the Somali conflict. However, given the Somali clan system, arguments from the primordialist school of thought<sup>3</sup> cannot be ignored in analysing the situation in the country. Similarly, the suggestion of the Wahhabism<sup>4</sup> influence within civil militia groups is not based on



**During General Siad Barre's military rule ethnicity became a factor of political life in Somalia.**

empirical evidence, but rather on profiling the Somali state as a breeding ground for religious-related terrorism.

### **Somali State Failure, Collapse and Disintegration**

The terms "collapsed state" and "failed state" signify the consequences of a process of decay at the nation-state level, where the capacity of those nation-states to perform positively for their citizens has atrophied.<sup>5</sup> The phenomenon of state collapse is generally understood as the breakdown or disintegration of centralised political institutions and the system of authority that underlies them, and the unravelling of complex relationships between the state and society. In the case of extreme state collapse, the very order of society disintegrates.<sup>6</sup> Somali state failure, collapse and disintegration can be attributed to two factors. First, like many post-colonial states, Somalia was fundamentally weak since its creation by British and Italian colonialists. Second, the creation of the post-independence Somali state was hampered by poor leadership, which lacked the capacity to define national priorities conducive

to consolidating short-term achievements related to the granting of political independence by colonial powers. In elucidating the role of leadership in state failure, William Reno observes that political leadership which lacks capable administration finds markets to be useful for controlling and disciplining rivals and their supporters, while intervening in markets enables rulers to accumulate wealth directly, which is then converted into political resources they can distribute at their discretion.<sup>7</sup> Reno further observes that a failed state bears the hallmark of a fragmented society divided along ethnic, clan and religious lines. Most importantly, ethnicity is used as a rallying point to mobilise society for war. The early post-independence Somali leadership was caught in this poor leadership syndrome of distributing patronage along divisive clan affiliations that further weakened the state-creation process.

**THE PHENOMENON OF STATE COLLAPSE IS GENERALLY UNDERSTOOD AS THE BREAKDOWN OR DISINTEGRATION OF CENTRALISED POLITICAL INSTITUTIONS AND THE SYSTEM OF AUTHORITY THAT UNDERLIES THEM, AND THE UNRAVELLING OF COMPLEX RELATIONSHIPS BETWEEN THE STATE AND SOCIETY**

### **Siad Barre and Civil Militia Groups**

The rise of General Siad Barre's military government in 1969 was a major contributory factor in the process of state failure in Somalia. It was during Barre's military rule that ethnicity became a factor of political life in Somalia. The Siad Barre military government was commonly referred to as MOD (Marehan, Ogaden and Dulbahunte)<sup>8</sup> – which were the main clans that exercised hegemony over other clan families during the military rule. Ioan Lewis observes further that the political exclusion of other clans and a crackdown on the religious establishment became a source of conflict between the regime and those excluded from the mainstream politics, economics and social spheres of the country.<sup>9</sup> Although Siad Barre claimed to embrace pan-Somali nationalism, his military regime was dominated by the MOD cabal. Paradoxically, what Siad Barre created in the end was a clan military dictatorship, which was eventually transformed to a clan civil militia group when his regime collapsed in 1991.

The 1977–1978 war between Somalia and Ethiopia over the Ogaden region, and the eventual defeat of Somalia, altered the military balance of forces in the Horn of Africa in favour of the victorious country. Consequently, it was Somalia's defeat in the Ogaden War that compounded and fast-tracked the process of state collapse. Somalia was, by then, awash with weapons of war, the military



**People stand on the ruins of the former Somali parliament building in Mogadishu (August 2013).**

regime was not capable of exercising control over the entire country, and clan-affiliated military resistance against the regime increased. The Ogaden War with Ethiopia revealed weaknesses in Siad Barre's leadership, and his hollow authority.<sup>10</sup> The Darod clan of Siad Barre became fragmented as the attempted coup by its Majerten subclan members was foiled. With the consequence of clan political power waning, in a situation characterised by clan contestation in the political arena and changes demanded in the military balance of power, the regime was further weakened. The triple burden of Somalia's defeat in the Ogaden War with Ethiopia and the accompanying national humiliation, an economy in decline, and the absence of superpower patronage was instrumental in the process of state failure in Somalia.<sup>11</sup> The Somali political battle then viciously turned inward, with implications of state failure, collapse and disintegration in 1991. Siad Barre's

**THE ENSUING INTERCLAN VIOLENCE THREATENED SIAD BARRE'S POSITION AND, IN DESPERATION, HE TURNED HIS HEAVY WAR MACHINERY ON THE HAWIYE QUARTER OF MOGADISHU**

Ogaden debacle led to the search for a clan scapegoat, with the result that clan cleavages were made prominent. It was this inward turn towards clan rivalry that created the clan security dilemma, with serious consequences on the civil war that still ravages Somalia and the emergence of clan-based civil militia groups. The militia groups then assumed the responsibility of protecting their specific clans' interests, while clan political structures were providing civil militia leaders with new militia recruits.

In 1989, the Hawiye clan-based United Somali Congress created a military force under the leadership of General Mohamed Farah Aideed, who hailed from the Habr Gedir Saad subclan of the Hawiye. Siad Barre allegedly responded to the military situation by urging the Darod clan in Mogadishu to kill Hawiye clan members.<sup>12</sup> The ensuing interclan violence threatened Siad Barre's position and, in desperation, he turned his heavy war machinery on the Hawiye quarter of Mogadishu. Similar military rebellions – and repression – were occurring in other parts of the country. Siad Barre turned Mogadishu into another military front, and overstretched his military capability to contain the military rebellion that was already spiralling out of control across the country. The northern part of Somalia had some of the strongest military resistance to the regime – and Siad Barre responded with further attacks



**A young woman holds the Somali flag during a demonstration by a local militia that formed to provide security in Marka, Somalia (April 2014).**

against the civilian population in Hargeisa and other major cities of Somaliland. The port city of Kismayo was equally engulfed in a clan-based conflict that likely had its roots in a pastoral conflict between the Marehan and Ogadeni subclan pastoralists over resources in the Juba region. By then, the conflict in the country had assumed distinct clan identity and character, and militia leaders were consolidating their stranglehold on what remained of the collapsing Somali state.

The Siad Barre-era clan conflict was about state capture, even though the instruments of the state were under serious threat and were gradually collapsing under the control of Siad Barre's military regime. On 27 January 1991, a popular uprising and general breakdown in security drove Siad Barre from his bunker in the ruins of Mogadishu into a tank, which eventually took him into exile. He left behind a country in ruins without a central government, and it marked a new chapter in the Somali conflict. There was no strong government capable of filling the vacuum; instead, there were numerous fragmented civil militia groups,

organised along clan patronage and lineage. These civil militia groups turned against each other once Siad Barre was defeated. Lack of agreement by the civil militia leaders on the formation of a government – at times encouraged by external influences – were critical in the further collapse and disintegration of the Somali state. The departure of Siad Barre created a void in which there was no single entity with legitimacy to use force and to develop and make laws in Somalia. Similarly, there was no single force to provide security; people were left to fend for themselves, and the country disintegrated into anarchy. Since the disintegration of the Somali state, the international community has

**THE DEPARTURE OF SIAD BARRE CREATED A VOID IN WHICH THERE WAS NO SINGLE ENTITY WITH LEGITIMACY TO USE FORCE AND TO DEVELOP AND MAKE LAWS IN SOMALIA**



attempted to create a central government – at times, to the detriment of peacemaking processes. The availability of large numbers of small arms in Somalia was pivotal in the evolution of civil militia groups, and lies at the source of the current conflict.

### Civil Militia Phenomenon

While the international community was focused on conferences and gatherings to encourage the creation of state institutions as a means of transforming the Somali conflict, a new civil militia phenomenon was emerging and gaining traction in Somalia: third-generation civil militia groups. This new generation of civil militia groups operate only in conditions of state disintegration, with no state instruments – not even in their weakest forms. The term “militia” has a Latin origin, meaning “soldier” from the word *miles* meaning “soldier”, and has evolved over time to mean “auxiliary or reserve military force”. A popular definition of civil militia presents the view that it is men between the ages of 16 and 60 years who perform occasional mandatory military service to protect their country, colony or state. But it also refers to bands of locals who arm themselves on short notice for their own defence.<sup>13</sup>

Conceptually, the history of militia groups can be placed within the framework of the theory of the social contract, which is the foundation of the Westphalian state system. Thomas Hobbes and Hugo Grotius believed that insecurity in the state of nature compelled man to seek security in social organisations, where individuals give up their partial freedom for secured freedom provided by the state.<sup>14</sup>

**THE TERM “MILITIA” HAS A LATIN ORIGIN, MEANING “SOLDIERY” FROM THE WORD “MILES” MEANING “SOLDIER”, AND HAS EVOLVED OVER TIME TO MEAN “AUXILIARY OR RESERVE MILITARY FORCE”**

The original ideas of militia groups have been overtaken by a new breed of militias that operate in situations of failed, collapsed and disintegrated states, such as Somalia. To this end, there is growing evidence that this group of “disruptive militias” are emerging in countries such as Afghanistan, Iraq, Libya, South Sudan, Syria and Central African Republic. Third-generation civil militia groups



GALLO IMAGES/AFP/ALI MUSA ABDI

**A vehicle of militiamen is seen on a field in Karan, north of Mogadishu.**



**A Somali gunman stands guard in a village north of Mogadishu (September 2003).**

are often organised along narrow political lines, religious intolerance and ethnicity. Factional militias are the most prominent type of armed group in failed and disintegrated states, and are often formed along clan political structures, where they represent the clan's political aspirations and defend its territory. The point of departure of third-generation civil militia groups is that they are found where the domestic sovereignty of the state has been decimated. These militia groups have the propensity to balkanise the country among themselves to maximise their benefits in the war economy of failed states.

The emergence of civil militia-controlled areas and the plundering of what has remained of the Somali state effectively means that the state ceased to exist as it was constituted in 1960. Civil militia groups that controlled Somalia were vilified and defined in relation to the United States (US) global war on terror, and the denigration of some civil militia groups as being aligned to Al-Qaeda further compounded the quest to find sustainable peace.

The Ethiopian government describes militia groups not aligned to its geostrategic interests in the region as Al-Qaeda-inspired terror groups, and refuses any efforts aimed at bringing such militia groups to the negotiation table. Consequently, the impact of the Somali conflict has spilt over to its neighbouring countries, particularly Kenya and Uganda. These two countries have recently experienced high incidents of terror attacks. Similar to Ethiopia, they have been outspoken in their description of Somali militia groups as being aligned to Al-Qaeda, ostensibly to attract US military support and other economic-related support.

### **Islam and Civil Militia Groups in Somalia**

Religion among Somalis invariably means Islam, of Sunni (a moderate kind of Islam) affiliation, and insofar as Somalis apply Islamic law, they follow the Shafi'ite school. Somalis adopted this religion gradually and of their own volition; it was never imposed on them.<sup>15</sup> Somalis are also Sufis in terms of their Islamic faith. Sufism – the mystical

view of the Muslim faith that exalts the charismatic powers of its saints – is particularly well adapted to the Somali clan system, in which clan ancestors readily become transposed into Muslim saints.<sup>16</sup> These Muslim saints are a fundamental departure from the Salafi and Wahhabi forms of Islam, which are founded on the theology of absolute monotheism (*tawhid*); they are different to the radical views of Wahhabism-inspired groups like Al-Qaeda and the Islamic State of Iraq and Syria (ISIS). Sufism is long established and well developed in Somalia,<sup>17</sup> and Al-Shabaab<sup>18</sup> is inspired by Somalis who believe in the Sufi sect of Islam. While some scholars suggest that Al-Shabaab

has its roots in Al-Qaeda, there is yet no empirical evidence to this effect.

Ibn Abd al-Wahhab, the founding father of Wahhabism, believed that only Islam adhered to the doctrine of absolute monotheism, setting it apart from every other religion, including Judaism and Christianity. It is on the basis of this strict adherence to monotheism that the Somali's Sufi beliefs are inevitably a point of conflict with Al-Qaeda. Al-Qaeda alliances – as is the case with the Taliban groups in Afghanistan and Pakistan – are founded on the common understanding that Wahhabism is the guiding interpretation of the Islamic faith.

European imperialism served as a catalyst for Islamic revivalism in several parts of the Muslim world: Emir Abdel Kader in Algeria, the Sanusiyya in Libya, the Wahhabis in Saudi Arabia, the Mahdi in the Sudan, and the Sayyid in Somalia.<sup>19</sup> This argument seems to be supported by current developments in Somalia where radicalisation correlates with external political intervention, such as the invasion of Somalia by Ethiopia in 2006. This invasion, and eventual defeat of the Union of Islamic Courts (UIC) by Ethiopian armed forces, resulted in the creation of the Al-Shabaab resistance group. Lewis suggests that the Al-Qaeda/Al-Shabaab matter became an issue following the 9/11

## AL-QAEDA ALLIANCES – AS IS THE CASE WITH THE TALIBAN GROUPS IN AFGHANISTAN AND PAKISTAN – ARE FOUNDED ON THE COMMON UNDERSTANDING THAT WAHHABISM IS THE GUIDING INTERPRETATION OF THE ISLAMIC FAITH



Members of the Al-Shabaab rebel group hold up their weapons in Mogadishu.



**A member of Al-Shabaab controls residents during a demonstration.**

attacks in the US, and concludes that there is no evidence to support the suggestion that Al-Qaeda has some level of influence within Somali militia groups.<sup>20</sup> And as mentioned previously, the continued categorisation of Al-Shabaab as being Al-Qaeda-inspired is without evidence. There appears to be ideological convergence between Al-Qaeda and ISIS, as opposed to a relationship with Al-Shabaab, in Somalia. There is evidence that Al-Shabaab has carried out attacks similar to those of Al-Qaeda and ISIS, but this does not make Al-Shabaab their ally.

### **Conclusion**

The failure, collapse and disintegration of the Somali state has resulted in the balkanisation of the country along clan-militia divides. These divided clan-militia groups lack the capacity to reunite the country and create a central government. The groups are sustained and supported by their clansmen, who depend on them for protection and political support in a situation of anarchy. Similarly, these

## **THE FAILURE, COLLAPSE AND DISINTEGRATION OF THE SOMALI STATE HAS RESULTED IN THE BALKANISATION OF THE COUNTRY ALONG CLAN-MILITIA DIVIDES**

groups are also dependent on their clansmen for the supply of new militia recruits. The interdependency between militia leaders and clan elders, therefore, has created an intractable situation and a significant challenge to conflict resolution in Somalia. The Somali conflict requires the investigation of new approaches to conflict resolution, particularly in the specific situation where the central government has collapsed and disintegrated and there is no legitimate authority to use violence.

In addition, the emergence of disruptive civil militia groups in countries such as Libya, Syria, Iraq and Yemen is a challenge that the international community and

academia need to explore. The emergence of these groups in disintegrated states has challenged the contemporary state system as the source of peace and stability, and this is evident in Syria, Libya and Yemen, where the process of state disintegration is gaining momentum.

The fact that the contemporary system of states is unable to relate to states without a government further compounds the conflict resolution process in collapsed states. Global political dynamics and the war against terror has resulted in the vilification of disputants in conflict areas, particularly in Somalia. And while the simple categorisation of Al-Shabaab as Al-Qaeda-inspired is without much foundation, evidence indicates that disputants have used the Al-Qaeda factor in the Somali conflict to access global funding from war against terror projects in the US. Neighbouring countries have also used the Al-Qaeda fear factor to access economic and military funding from the US and other Western governments. Al-Qaeda's practice in other cases suggests that it would have required a show of loyalty from its allies – for example, by demanding the destruction of holy sites in Somalia – had there been any ideological convergence with Somali militia groups. Even if Al-Shabaab is not necessarily aligned with Al-Qaeda, the group has adopted similar strategies and tactics to those of Al-Qaeda and ISIS in attacking civilian populations, at times even across the borders of Somalia. ▲

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#### Endnotes

- 1 The Peace of Westphalia refers to the pair of treaties (the Treaty of Münster and the Treaty of Osnabrück) signed in October and May 1648 which ended both the Thirty Years' War and the Eighty Years' War. The three main principles of a Westphalian state system are: the sovereignty of states and the fundamental right of political self-determination, (legal) equality between states, and non-intervention of one state in the internal affairs of another state.
- 2 Vinci, Anthony (2009) *Armed Groups and the Balance of Power: The International Relations of Terrorists, Warlords and Insurgents*. London: Routledge, pp. 11–40.
- 3 Primordialism contends that nations are ancient, natural phenomena. It emphasises the concept of kinship, where members of an ethnic group feel they share characteristics, origins or sometimes even a blood relationship.

- 4 Wahhabism refers to the very conservative and radical side of Islam. Wahhabism represents Salafi piety, that is, its adherence to the original practices of Islam and the movement's vehement opposition to the Shia branch of Islam.
- 5 Rotberg, Robert (2004) *The Failure and Collapse of Nation States: Breakdown, Prevention, and Repair*. In Rotberg, Robert (ed.) *When States Fail*. Princeton: Princeton University Press, pp. 14–20.
- 6 Demetriou, Spyros (2003) *Rising from the Ashes? The Difficult (Re)Birth of Georgian State*. In Milliken, Jennifer (ed.) *State Failure, Collapse and Reconstruction*. Oxford: Blackwell, pp. 1–45.
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- 14 Ibid.
- 15 Van Notten, Michael (2005) *The Law of the Somalis: A Stable Foundation for Economic Development in the Horn of Africa*. Asmara: Red Sea Press, pp. 29.
- 16 Lewis, Ioan M. (2002) op. cit., p. 63.
- 17 Lewis, Ioan M. (2010) *Making and Breaking States in Africa: The Somali Experience*. Asmara: Red Sea Press, p. 8.
- 18 Al-Shabaab means "The Youth" in Arabic. It emerged as the radical youth wing of Somalia's now-defunct Union of Islamic Courts, which controlled Mogadishu in 2006, before being forced out by Ethiopian forces.
- 19 Adam, Hussein M. (2009) *Political Islam in Somali History*. In Hoehne, Markus and Luling, Virginia (eds) *Milk and Peace, Drought and War: Somali Culture, Society and Politics*. New York: Columbia University Press, p. 122.
- 20 Lewis, Ioan M. (2010) op. cit.

# UNDERSTANDING THE RECRUITMENT OF CHILD SOLDIERS IN AFRICA

BY ANNE-LYNN DUDENHOEFER



GALLO IMAGES/ REUTERS/JACKY NAEGELIN

While it is estimated that about 40% of all child soldiers globally are active on the African continent, scholars appear to evaluate this number in different ways. Vera Achvarina and Simon Reich draw the conclusion that “[s]ince 1975, Africa has become the epicentre of the problem, providing the largest concentration of both conflicts and child soldiers”.<sup>1</sup> On the other hand, Mark A. Drumbl states that “only a plurality – reportedly, about 40% – of the global number of child soldiers is located on the African continent”.<sup>2</sup> Many African societies are experiencing

or have experienced civil conflict at some stage, but it is important to emphasise that this article does not intend to “Africanize a global phenomenon and pathologize African conflicts”.<sup>3</sup>

Although the causes of civil conflicts remain almost too complex to be thoroughly analysed, some attention

**Above: It is estimated that about 40% of all child soldiers globally are active on the African continent.**



**Child soldiers are expendable, replaceable, cheap to maintain and psychologically more vulnerable than many adults.**

has to be paid to the so-called feasibility thesis, which suggests that rebellious movements occur where they are feasible.<sup>4</sup> Underlying causes of civil conflicts can be said to be low per-capita income and slow economic growth, among others.<sup>5</sup> For rebel groups and other individuals, civil war might be seen as an economic opportunity. Other explanations for civil war, and its reasons, such as the greed and grievance debate, have been challenged and will not be tackled in this article.<sup>6</sup>

To understand the living situation of many African children, it is essential to recognise the risk involved with a post-conflict society relapsing into conflict. Within a time span of a decade, according to Paul Collier et al., this risk is as high as 40%<sup>7</sup> – meaning that many children live in an environment that is constantly under threat of reverting to conflict. “Many of these wars do not formally end through victory or negotiated settlement; they are low-intensity conflicts [...]. It is in these types of environments that we are most likely to encounter the use of child soldiers.”<sup>8</sup>

- Moreover, the end of the cold war left some armed forces or groups without further financial support – before, they had been supported by either the United States or the Soviet Union fighting proxy wars.<sup>9</sup> The result was that “[g]roups no longer able to finance their conflicts pursued peace negotiations, were defeated

militarily, or started recruiting or abducting relatively cheap child soldiers”.<sup>10</sup>

By understanding the recruitment process of child soldiers, the design of post-conflict reintegration programmes can be improved. Future recruitment can be prevented if international agencies know the underlying causes for employing child soldiers. Therefore, two major questions require further exploration. First, why are child soldiers recruited at all? Second, why and how do children join armed forces and groups? Not all recruitment can be said to happen involuntarily. In other words, the push and pull factors involved have to be critically assessed.

### **The Reasons for Recruitment**

The benefits of recruiting child soldiers seem to be concealed when first approaching the topic. Why would any army or military movement rely on the inferior physical power and inexperience of children? Why are children the “weapon of choice” in so many countries?<sup>11</sup>

Roméo Dallaire, who encountered child soldiers in the Rwandan genocide, states that more than 50% of the population in many African conflict or post-conflict zones consists of children younger than 18 years old.<sup>12</sup> Consequently, one of the reasons for employing

child soldiers is that “they are viewed as expendable, replaceable” – and they are cheap to maintain. They are also psychologically more vulnerable than many adults, who already have a more shaped personality. Since younger children, in particular, can lack a sense of fear, they might be preferred over adults because they accept more dangerous tasks without scrutinising them.<sup>13</sup> Children’s and adolescents’ identities are still being formed, meaning that they can be more easily influenced and controlled, since they are dependent on protection and guidance. If parents, family and friends are lost, children might:

...transfer loyalty to another adult, especially one who holds the power of reward and punishment. They can be psychologically manipulated through a deliberate programme of starvation, thirst, fatigue, voodoo, indoctrination, beatings, the use of drugs and alcohol, and even sexual abuse to render them compliant to the new norms of child soldiering.<sup>14</sup>

Still puzzling, though, is the question of how children can actually be effective in direct combat, given the fact that they are smaller and physically weaker than adults? Child soldiers are able to take part in combat, due to the widespread and global proliferation of small arms – mainly AK-47 assault rifles, the so-called Kalashnikovs.

## SINCE YOUNGER CHILDREN, IN PARTICULAR, CAN LACK A SENSE OF FEAR, THEY MIGHT BE PREFERRED OVER ADULTS BECAUSE THEY ACCEPT MORE DANGEROUS TASKS WITHOUT SCRUTINISING THEM

“[T]echnological improvements in small arms now permit these child recruits to be effective participants in warfare,”<sup>15</sup> which makes them almost as dangerous and effective as any adult soldier. Approximately more than 70 million AK-47 rifles have been produced globally since 1947,<sup>16</sup> and this weapon “can be easily carried and used to deadly effect by children as young as 10”.<sup>17</sup>

Due to the wide proliferation of small arms, two major problems are faced in post-conflict societies and throughout the disarmament and demobilisation process. First, a country’s leadership finds itself confronted with large stocks of so-called “surplus weapons”, which could pose a serious security threat if they fall into the wrong hands.<sup>18</sup> Second, “enormous numbers of weapons remain or fall in the hands of ex-combatants”<sup>19</sup> because disarmament programmes might have limited success –



GALLO IMAGES/ REUTERS/DAVID LEWIS

**The availability of small arms allows child recruits to be effective participants in warfare.**





**Abduction is the most common method by which child soldier recruitment takes place.**

many combatants own more than one weapon and are suspicious about turning them in, in case ceasefires do not hold.

Although the spread of light weaponry certainly does play a significant role in the use of child soldiers, it has to be borne in mind that children also participate in conflict without technologically advanced weapons. In Rwanda, killings took place by either using a *panga*, which is a machete, or a *masu*, a club studded with nails.<sup>20</sup> As Drumbl states: “Child soldiering connects to these conventionally cited and situational forces [but...] is, however, much more than merely epiphenomenal to these forces.”<sup>21</sup> To understand more about the recruitment of child soldiers, both forced and voluntary recruitment have to be thoroughly analysed.

### **Forced Recruitment**

Abduction is the most common method by which child soldier recruitment takes place. In short, there are two primary ways children can become child soldiers:

1. they are abducted, or conscripted through coercion or severe threats; or
2. they are born into forces or groups.<sup>22</sup>

**ACCORDING TO THE 2008 GLOBAL REPORT ON CHILD SOLDIERS BY THE COALITION TO STOP THE USE OF CHILD SOLDIERS, THE LRA HAS ABDUCTED ABOUT 25 000 CHILDREN SINCE THE 1980S**

The Lord’s Resistance Army (LRA) in Uganda, for example, is commonly known for abducting children from their homes. According to the 2008 Global Report on Child Soldiers by the Coalition to Stop the Use of Child Soldiers, the LRA has abducted about 25 000 children since the 1980s. “During active hostilities children in the LRA were forced to participate in combat and to carry out raids, kill and mutilate other child soldiers and civilians, and loot and burn houses.”<sup>23</sup> Although most parents and family try to hide and protect their children, many of them get taken anyway – as in the case of an adolescent who had been abducted at the age of 16 in Sierra Leone:

My Dad and I were planting rice and the Revolutionary United Front (RUF) came and captured us. Dad begged



**Children may seek security in fighting forces that provide a sense of belonging and group identity.**

the soldiers to release me, but they insisted... Dad trailed them since he couldn't let me go... So they killed my Dad.<sup>24</sup>

Similar to the LRA, the RUF in Sierra Leone used abduction as one of its main recruitment methods, but it should not be forgotten that "all sides had recruited children, who were the main victims of forced recruitment"<sup>25</sup> – meaning that the pro-government Civil Defence Forces (CDF), the Armed Forces Revolutionary Council (AFRC) and the Sierra Leone Army also forced children into their ranks. "By 1998 about 25% percent of the fighting forces were under 18."<sup>26</sup>

### **Voluntary Recruitment**

However, if children are not forcibly recruited, why do they decide to join armed groups and forces, apart from peer pressure? Whereas push factors first drive children away from their known environment, pull factors encourage them to join the fighting forces. Push factors include "grievances, repression and discrimination"<sup>27</sup> as well as poverty, lack of education and employment, abuse at home or – due to previous conflict – having no

home or community at all any more. Pull factors include – paradoxically – seeking security in fighting forces, provision of food, a sense of belonging and ideology or group identity, as well as economic reasons such as gaining profit.<sup>28</sup> A study on recruitment in Colombia, for example, revealed that many children who voluntarily joined the Revolutionary Armed Forces of Colombia (FARC) were driven by "poverty, unemployment, vengeance, avoiding violence from the rival group, and the allure of the military life"<sup>29</sup> as main push factors.

Furthermore, children are often promised some payoff when joining armed forces and groups. These can be divided into pecuniary and non-pecuniary rewards, with pecuniary rewards mostly consisting of "wages, one-shot monetary rewards (often associated with loot), and other tangible rewards such as drugs and alcohol".<sup>30</sup> Non-pecuniary rewards could include the achievement of rank, bonding with comrades and commanders, and forming a group identity. All these factors are used to motivate group members, which is why allegiance is seldom achieved by pecuniary rewards but rather by certain socialisation processes.<sup>31</sup> Hence, not all children are simply forced at gunpoint to become combatants – in many

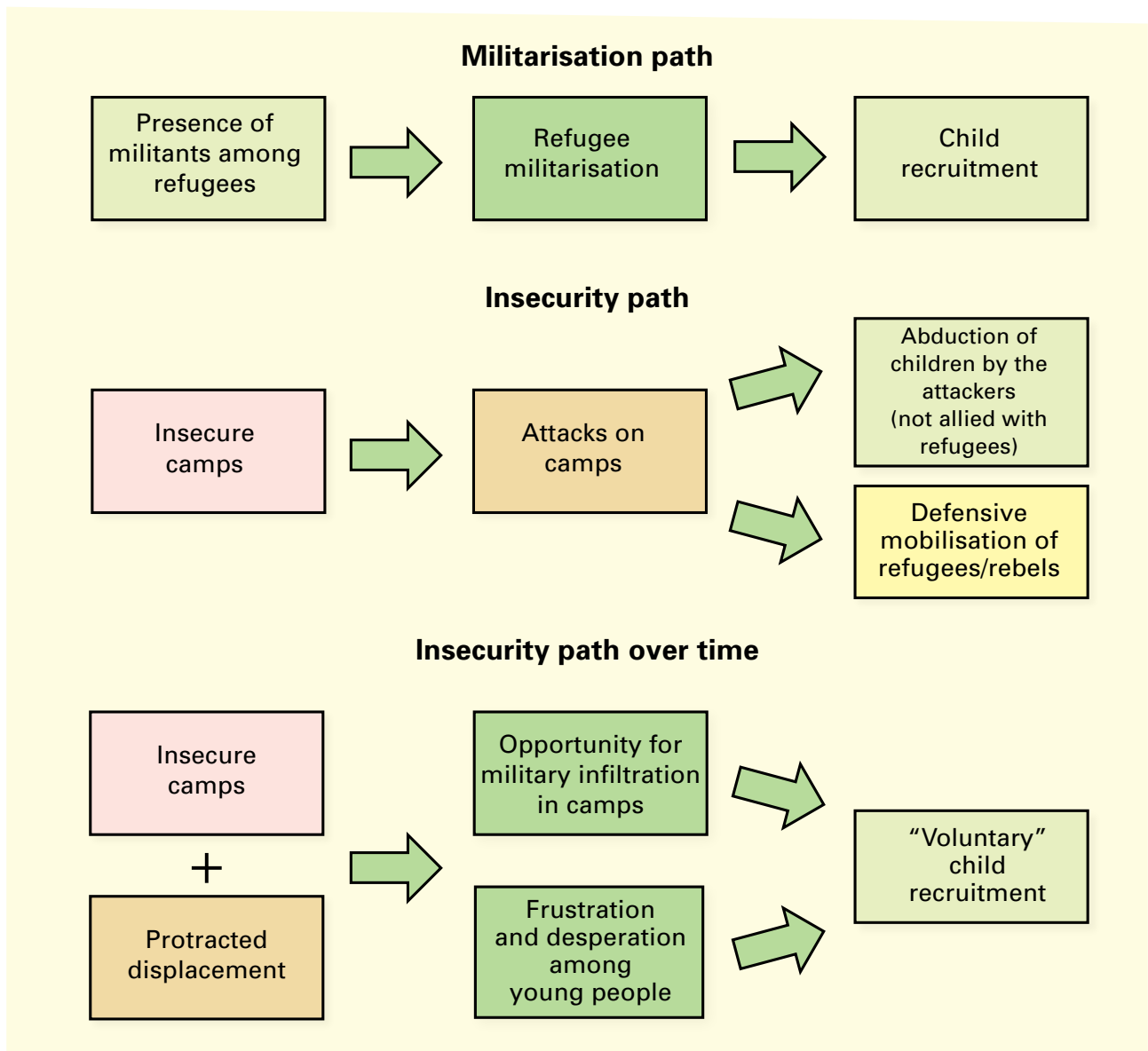
cases, their decision is made based on their social, cultural and economic environment and limited opportunities.

One remaining significant question is why the use of child soldiers differs from area to area or country to country? It is important to realise that numerous reasons are valid, and that it is tempting but misleading to make sweeping generalisations. However, it is crucial not to omit so-called accessibility factors, which describe to which extent children are easily accessible for recruiters.<sup>32</sup> Recent studies have suggested that the previously mentioned push and pull factors indeed contribute to children becoming soldiers, but those factors alone do not capture the full picture.

For recruiters, easy access to large groups of children is provided in refugee and internally displaced persons (IDP) camps. While “[i]nternational law mandates respect the civilian and humanitarian character of refugee camps and

prohibits refugee participation in military activity”,<sup>33</sup> the same does not hold true for IDP camps. Here, international law assumes that since people are internally displaced, their national governments will take care of them. “In reality, though, IDPs flee because their government cannot or will not protect them”<sup>34</sup> – meaning that, in many cases, IDP camps remain almost unprotected, thus turning into major recruitment grounds, infiltrated by fighting forces.

Political scientist Sarah K. Lischer recognises two main patterns by which children are recruited in refugee and IDP camps: the militarisation path and the insecurity path.<sup>35</sup> As visualised below, both the militarisation path and the insecurity path are actively used in refugee camps to recruit new child soldiers. The presence of non-civilian militants among refugees can lead to refugee militarisation, and subsequently to the recruitment of child soldiers. Insecure camps, on the other hand, pave the path for the abduction



of refugee children by militant groups, while the insecurity path over time leaves room for potential child soldier recruiters to infiltrate the camps and indoctrinate children and adolescents.

Another study went even further by stating that “substantial poverty rates say little about whether a country is likely to have child soldier participants in armed conflicts”.<sup>36</sup> Moreover, it is argued that even orphan and child soldier rates do not exhibit any significant correlation in the countries under investigation, such as Sudan, the Democratic Republic of the Congo (DRC), Burundi, Senegal, Mali, Rwanda, Uganda, Angola, Mozambique, Sierra Leone and Lesotho.<sup>37</sup> As can be seen, although circumstances such as severe poverty can definitely have a threshold effect, accessibility factors should not be underestimated.

**SUCH SITUATIONS LEAVE CHILDREN PARTICULARLY VULNERABLE TO ABDUCTION AND RECRUITMENT, SINCE MANY CHILDREN IN THESE CAMPS LACK FAMILY PROTECTION OR SUPPORT BY RELATIVES**

Due to this realisation, non-governmental organisation workers and volunteers often try to protect refugee and IDP camps by their mere physical presence, trying to deter recruiters:

This “protection by presence” usually breaks down in the face of life-threatening security situations. In 2006, riots in a camp for internally displaced persons in Darfur, Sudan, forced the evacuation of aid workers and journalists from the camp. The only security force consisted of a handful of unarmed African Union soldiers.<sup>38</sup>

Such situations leave children particularly vulnerable to abduction and recruitment, since many children in these camps lack family protection or support by relatives.

### **Conclusion**

Now the question is whether we will commit ourselves to the protection of our most precious heritage, our children.<sup>39</sup>

In sum, the recruitment of child soldiers is more complex than it initially appears. Each individual child has a different life story and upbringing, as well as individual



GALLO IMAGES/ REUTERS/STR NEW

**For recruiters, easy access to large groups of children is provided in refugee and internally displaced person camps.**



**Former child soldiers of the surrendered Mai-Mai militia are taken to a Transit and Orientation Center by officers of the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo's Child Protection Section (November 2013).**

reasons to either try to stay away from armed forces and groups or to join them – if they have not already been forced to join the ranks.

Again, what has to be borne in mind is the need to look beyond conventional wisdom and stereotypes: most voluntary recruitment is not due to children's free choice. For some children, joining a guerrilla movement might be the most attractive alternative to stay alive, given the social, structural and political conditions. In other words, the universal condemnation of the recruitment of child soldiers needs to take the issue of alternatives into consideration. What if the alternative is worse than becoming a child soldier? If the recruitment and re-recruitment of children as

**IF THE RECRUITMENT AND RE-RECRUITMENT OF CHILDREN AS SOLDIERS IS TO BE PREVENTED, THEN THE ECONOMIC, SOCIAL AND INDIVIDUAL ENVIRONMENT OF POTENTIAL RECRUITS MUST BE TAKEN INTO ACCOUNT**

soldiers is to be prevented, then the economic, social and individual environment of potential recruits must be taken into account.

Finally, the reintegration of former child soldiers should aim at preventing further recruitment. It makes no sense to simply let it happen and then provide aid after the damage has occurred. In addition to the idea that successful reintegration can serve as a recruitment prevention strategy itself, other strategies should also be employed.

There are other strategies that must be combined to have an effect on the recruiters of child soldiers. Currently, the UN employs three different strategies: "deterrence, naming and shaming, and criminalisation of the recruitment of child soldiers."<sup>40</sup> While every strategy has proven to have severe limitations, and even the effect of the prosecution of military leaders for war crimes and the employment of child soldiers is questionable,<sup>41</sup> it can be agreed that even slow progress is, nonetheless, progress. Whether this progress continues or not will also depend on the assistance provided to disarmament, demobilisation and reintegration. The recruiters of child soldiers should be held accountable by international as well as national agencies.<sup>42</sup>

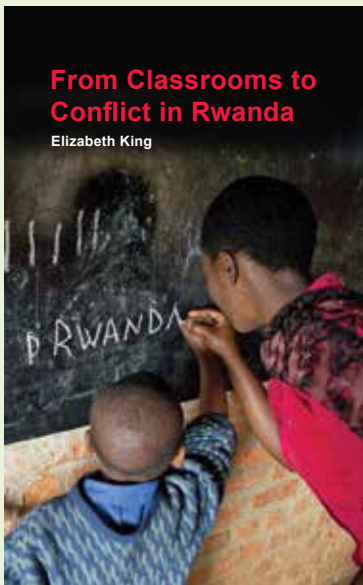
Dealing with the highly complex issue of recruitment and the reintegration of child soldiers – and, possibly, even the future prevention of their employment – is a very challenging problem with significant consequences and impacts. But, Dallaire reminds us to remain indefatigably positive and steadfast in our quest to end the recruitment of child soldiers:

...but so what if we have to battle? So what if it takes forty or fifty years to end the use of the child soldier [...]? It will have been worth it for the betterment of humanity and the protection of our youth.<sup>43</sup> ▲

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## FROM CLASSROOMS TO CONFLICT IN RWANDA

Author	<b>Elizabeth King</b>
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The genocide that took place in Rwanda in 1994 has been analysed from many perspectives, the most common being through the lens of security and (lack of) international involvement. International apathy, ethnic divisions created and crystallised through Belgian colonial rule, and a long history of ethnic hierarchical tensions leading to economic disparities are often offered as the root causes of the 100-day massacre that took place efficiently and swiftly, leaving close to one million Tutsi and Hutu moderates dead. In *From Classrooms to Conflict in Rwanda*, author and researcher Elizabeth King examines the genocide from another perspective: through the education system spanning the past century in Rwanda. King examines not only the *quantity* of education, but also the *quality* of Rwanda's curriculum, and how it may have contributed to the eventual conflict. She examines schooling in Rwanda throughout three essential time periods in the nation's modern history: the colonial period (1918–1962), the two republics (1962–1994), and post-genocide Rwanda (1994–current).

King claims that the Belgian colonial influence on education (1918–1962) and its lionisation of hierarchical group divisions and individual conformity played an important role in the 1994 genocide. Access to education – an important factor in future upward mobility – was highly restricted, and was distributed along ethnic identities and divisions that were endorsed by the state. This resulted in the solidification of differential identities, with one minority ethnic group – Tutsi – being highly valued by Belgian rulers, due to perceived superiority over the majority Hutu population. The curriculum presented during this time period helped to solidify “categorizing, collectivizing, and stigmatizing” (p. 68) of Rwandans based on ethnicity, which contributed to intergroup tensions and

resentment. In addition, the national curriculum required rote memorisation, group-think and conformity, and discouraged critical thinking and individual agency. King identifies the latter as two essential components of conflict resolution and the de-escalation of potential violent conflict.

### IN ADDITION, THE NATIONAL CURRICULUM REQUIRED ROTE MEMORISATION, GROUP-THINK AND CONFORMITY, AND DISCOURAGED CRITICAL THINKING AND INDIVIDUAL AGENCY

King discusses Rwanda's history of education and curriculum development under the First Republic and Second Republic, with the First Republic occurring post-independence under the Hutu leadership of Gregoire Kayibanda between 1962 and 1973. The Second Republic was ushered in via a military coup, led by Hutu military General Juvenal Habyarimana, in July 1973. King asserts that the education of Rwandan children in this time period (1962–1994) played a critical role in the resulting genocide, “laying both the social-structural and psycho-cultural conditions” necessary for large-scale inter-ethnic violence (p. 109). Specific ethnic quotas allowing limited access to secondary education – this time in favour of the Hutu population – were introduced during this time period and helped to solidify an “us versus them”, “in-group versus out-group” mentality. As in most of the world, education in Rwanda is crucial for upward mobility and economic opportunity. Lack of basic education based on ethnicity created long-term inequalities, resulting in animosity and deep-seated tensions between the two groups. Again,



**Education is a powerful tool that can be wielded to establish and reinforce divisions, or to create a system that provides opportunities for conflict resolution and peacebuilding.**

the overall curriculum presented to school-age children assisted in crystallising ethnic differences, with Tutsis often presented as outsiders; Hamitic foreigners with no given right to the country itself. During this time period, primary and secondary school students were required to identify themselves verbally, based on ethnic identity, resulting in classroom and schoolyard discrimination, stigmatisation and violence. The result was the hardening of a perceived hierarchy of qualities based on ethnic distinctions, taught throughout a child's formative years and eventually contributing to the large-scale atrocities in 1994.

King explores the enormous task the post-genocide government had in rebuilding and restructuring Rwanda's education system following the genocide. The violent conflict left 1.2 million children orphaned, 100 000 living within a child-headed household, thousands of children internally and externally displaced, and all of them vulnerable and highly traumatised (pp. 111–112). Despite the many competing priorities, the new post-genocide government, led by Paul Kagame and the Rwandan Patriotic Front (RPF), wisely identified the reconstruction of schools and the educational system as a topmost priority. Political stability was achieved rather quickly, and the RPF government identified the root of the violent conflict to have been based in colonial "divide and rule" tactics

that pitted Rwandan against Rwandan. The government quickly abolished ethnic identity cards, discouraged the "public use of ethnicist ideology" (p. 114) and aimed to create a policy of "one Rwanda for Rwandans". It is currently a violation of Rwandan law to self-identify as ethnically Hutu, Tutsi or Twa. Rwanda's curriculum was temporarily suspended post-genocide in order to rewrite and re-establish materials that would promote peacebuilding and inter-ethnic cooperation. It is commonly accepted by Rwandan society that the genocide was almost solely based on societal ignorance, bad governance and a lack of education – a myth that King attempts to disprove.

## **RWANDA'S CURRICULUM WAS TEMPORARILY SUSPENDED POST-GENOCIDE IN ORDER TO REWRITE AND RE-ESTABLISH MATERIALS THAT WOULD PROMOTE PEACEBUILDING AND INTER-ETHNIC COOPERATION**

King provides a balanced perspective on what has been achieved over a 20-year time period, including an analysis of what should be addressed to avoid a recurrence of the



tensions that led to the eruption of widespread violence in 1994. While the promulgation of the 2003 Constitution declared primary education to be free and compulsory for Rwandan children, King recognises and asserts that it is access to higher education – secondary and tertiary – that is the true indicator of an individual’s eventual upward mobility and economic stability. Kagame’s commitment to equal access in this regard would help to erode the horizontal inequities that led to tensions, resentment and violent uprisings. In addition, while past curricula that created divisive ethnic lines were erased during the rewriting process in 1994 and 1995, King claims that these lines have been simply redrawn – albeit in genocide survivor-perpetrator categories (pp. 147–148). Stigmatisation, collectivisation and differentiation are still acutely a part of Rwandan academic structure and curriculum. Critical thinking skills (which King asserts to be a crucial element of peacebuilding), individual agency and conflict resolution are still absent from mainstream Rwandan education. This leaves students vulnerable to the eruption of tension due to leftover resentments from past inter-ethnic conflicts, and with a lack of essential skills necessary to resolve them peaceably.

## KING RECOGNISES AND ASSERTS THAT IT IS ACCESS TO HIGHER EDUCATION – SECONDARY AND TERTIARY – THAT IS THE TRUE INDICATOR OF AN INDIVIDUAL’S EVENTUAL UPWARD MOBILITY AND ECONOMIC STABILITY

King’s work is a well-researched, meticulous examination of how primary, secondary and tertiary education throughout Rwanda’s history may have contributed to the conflict. It also offers policy and programme ideas that are necessary to continue to reform the system in an effort to avoid future intrastate conflict. Currently, 43% of the Rwandan population is under the age of 14 years; education is therefore “an even larger influence” (p. 165) on Rwanda’s future stability. King asserts the current education system “warrants concern” (p. 147), as past mistakes are being repeated at a time where innovation is necessary. Rwanda’s next elections are to be held in 2017, and political upheaval is expected as the 20-year rule of Kagame and the RPF party – the only party to rule Rwanda post-genocide – comes to an end. Education is revealed by King to be a powerful tool that can be wielded to establish and reinforce divisions, or to create a system that provides opportunities for conflict resolution and peacebuilding. King’s work should not be solely relegated to those in the field of education or educational reform, but should be considered essential reading for international and national stakeholders in the area of international development, peacebuilding, international and national security, conflict resolution, good governance and state/nation-building.

King’s work is a fresh and new perspective on education and national stability as a whole, as common rhetoric establishes the norm that the quantity of education is paramount, and quality is often overlooked. Lack of education is often cited as a contributor to instability and pervasive poverty, which can lead to political and state instability, but rarely is the *quality* of education examined to assess the role it may play in the creation of conflict. This type of assessment, along with policy and programme changes that could be implemented following assessment, would transfer well to other intrastate tensions that often border on violent conflict – such as xenophobia in South Africa, Israel-Palestinian tensions, and ongoing black civil rights movements in the United States of America. **A**

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