Foreword

Starting a Journal is an undertaking which implies a determined and sustained commitment. Accepting such a responsibility presupposes the conviction that there is a definite and ongoing need for the envisaged Journal.

At ACCORD we are convinced that such a need does exist, and that we should add our contribution towards fulfilling it. We are of course aware of the fact that acknowledging this need points in more than one direction.

Firstly, it points to the reality of our human situation. Accepting the need for regular literature on conflict resolution means accepting the unremitting presence of conflict itself. This can be done, however, in a responsibly realistic way, without surrendering to the pessimism of those with an authoritarian mindset. At ACCORD we prefer to regard the prevalence of conflict as an absorbing and challenging reality, which should be approached frankly and constructively.

The second direction in which the need for conflict resolution writings points, is the entire dimension of responding to conflict. This is the fascinating field in which we as an ACCORD team are rendering our services to fellow human beings. We remain committed to work as constructively and effectively as possible in each and every situation where we can be of help.

We realise that this work does not only need creativity in every unique conflict situation. It also calls for open-mindedness in more than one sense. There is, for instance, the inclusive openness of accepting the presence and good work of many other organisations and individuals in the same field. There is also the receptive openness to academic achievements and research findings with regard to conflict and conflict resolution.

It is with such open-mindedness that we are launching this Journal.

- We are modestly and non-competitively, but nevertheless assertively, adding it to the large and growing family of conflict studies journals. We do trust, however, that our contribution will manage to share something special about insights and skills from South Africa and Africa.
- At the same time we are affirming our receptivity to scholarly work in the conflict studies field. In addition to all our practical work of training and mediating, we maintain our involvement in presenting and promoting academic courses. The Journal is intended to supplement and enhance this academic project. It will serve as a communication channel for articles of a more academic nature, while our recently launched magazine, Conflict Trends, is meant for the more topical, practical and newsworthy articles.
- This does not mean, however, that the Journal will be made up of high-flown theoretical study and research material, or of that only. Neither does it mean that the magazine will be of little interest to academics. (As a matter of fact, in one of the articles in this edition of the Journal material from Conflict Trends has already been referred to.) We are therefore open to submissions ranging from those on a purely theoretical wavelength to those in which theory and practice are interrelated in a cross-fertilising way.

The five articles selected for this first issue may serve as good examples of the diversity of topics, approaches and writing styles that can be expected in the wide, inclusive field of conflict studies. (Both genders are not represented this time, but will be next time!) These articles comprise issues and inferences relating to our past, present and future. Time-proven traditions are reviewed. Current efforts to become liberated from a fallacious disaster of the past are discussed. A case study shows how an environmental conflict can arise and be addressed. Recommendations are made about civilian contributions to security matters. And guiding suggestions are given for political conflict resolution in the Africa of the future.

With sincere thanks to the authors who have made their articles available, and to our Advisory Board who have assessed them and recommended improvements (also to the authors, who were willing to incorporate these suggestions), we now pass on the following pages to all who wish to read (some of) them. We trust that our readers will read receptively but critically, and will be able to make meaningful use of some new, or adapted, or endorsed, insights in discussing, planning and performing the valuable work they are doing.

We are of course open to criticism, comments and suggestions from our readers. We sincerely wish to make this Journal as meaningful, useful and user-friendly as possible. We are therefore looking forward to what readers will tell us about their interests and needs with regard to topics, and their preferences with regard to more theoretical and/or more practical writing styles. All kinds of feedback will be most welcome indeed, and will be taken seriously. Wherever we can improve the quality and value of this Journal, we will be most willing to do it.

Jannie Malan, Editor

Traditions of Conflict Resolution in South Africa

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ABSTRACT

In the domain of law, and elsewhere, alternative dispute resolution can be used in more than one way. It may signify a recognition that there are other methods than litigation, and that these may sometimes be more appropriate. But it may also serve as a label for methods which are frowned upon as popular but amateurish. This article is written from the perspective that the deep roots and valid reasons for traditional conflict resolution methods and customs should be taken seriously. They form part of time-proven social systems, in which the objective is usually more than just settling a case. Such methods, whether they include more adjudication or more mediation, are especially oriented towards reconciliation and the maintenance or even improvement of social relationships. Representative examples from a few South African societies are discussed, as well as the current situation of Western and customary law, modern courts and tribal courts, legal professionals and traditional leaders. Possibilities for the future are pointed out, in an increasingly urbanised South Africa, but a South Africa with a new Constitution.

> *It was my fortune to be well versed in the fundamentals of what is called Native Law and Custom, so I was able to take up my court work with no great difficulty. But my main pleasure in this activity came from the rewarding attempt to reconcile people who were at variance, and from the debate involved. I love the impact of mind upon mind, and I love thrashing things out in the attempt to get at the truth. The procedures of the court give these things orderliness, and getting at the truth is worth while for its own sake. The dying arts of exposition hold great attraction for me.*
>
> (Luthuli 1962:56)

1. Introduction

The use of alternative methods of conflict resolution by the traditional societies of South Africa is deeply rooted in the customs and traditions of the various tribes of the sub-continent. These range from the fairly rudimentary processes of the Khoisan of the remote Northern Cape to the sophisticated traditional courts of the Zulu in KwaZulu-Natal.

Some methods of conflict resolution as practised by traditional societies of South Africa, which are representative of the main tribal affiliations in the region, will be considered here. Reference will be made to the provisions of the Constitution and Bill of Rights that will play an important role in the development of South African jurisprudence, especially in respect to customary law, and to the central role of chiefs and headmen in the conflict resolution process (Hammond-Tooke 1993:65).

2. Western and African court processes of dispute settlement

Bennett reflects on the judicial process in an African context and compares it with its western counterpart. The essence of the African process was reconciliation of the parties in an environment quite the opposite of the western model, which seems designed to alienate and confuse the litigant (Bennett 1993:32). Gluckman, in similar vein, points out that in the case of western judges there is some judicial intervention in divorce cases and family disputes designed to getting the parties to settle their differences. He illustrates the point by referring to marriage guidance councillors who

> work on disputing parties as Lovedu and Tiv judges do, without authority to lay down decisions or enforce verdicts . For, in the end, though the

> methods of tribal courts resemble in some respect those of councillors in our own society, they approximate more to the methods of our courts. They are authoritative.
>
> (Gluckman 1965:187)

The importance of the process, therefore, lies in the goal it has set itself and that, invariably, is to restore a balance, to settle conflict and eliminate disputes.

One of the most important features distinguishing between western and African processes of dispute settlement is the manner in which the social relationships between the parties involved in the respective processes are treated. Nader and Todd, referring to the analysis adopted by Gluckman, argue that these relationships are either simplex or multiplex. The relationship determines the procedural form of the attempt at settlement and thus determines the outcome of the dispute (Nader & Todd 1978:12-13). The ensuing hypothesis is that the parameters of the settlement process are determined by the nature of the relationships involved. Accordingly, multiplex relationships depend upon measures of negotiation or mediation to result in compromises, whereas simplex relationships depend upon adjudication or arbitration to end up in win or lose decisions (Nader & Todd 1978:13).

Save for the paradoxical situation in countries such as Japan, India and South Africa, among others, where traditional approaches are extant and fundamental to the resolution of conflict, even within an industrialised urban setting, the position is generally different in industrialised societies, according to various scholars (Nader & Todd 1978:21). Abel (1982:2) states that western capitalism rejects the values placed on reputation in the face-to-face community . Cappelletti castigates the western orientation towards a rights culture, which looks upon judicial solutions or contentious justice as an ideal, to the exclusion of other possibilities such as are promoted in other civilisations, which he describes as coexistential justice (Cappelletti 1992:34). The parties in the latter situation are interested in mending rather than terminating relationships (Cappelletti 1992:35). In contrasting western court processes of dispute settlement with those of African courts, Bennett notes that the essence of the latter is a tendency to mediate or arbitrate rather than to adjudicate. Reconciliation of disputes was preferred and the impartial application of rules was inevitably of less consequence (Bennett 1991b:54).

The closest that a conventional western-orientated court comes to such a process is the stage when an order is taken by consent, usually at the end of protracted negotiations in the course, or at the end of litigation. The judge plays little, if any, role in

the process and it is usually left to the parties to negotiate the consent order through their legal representatives. This is not the usual result of the typical trial process which invariably ends in an arbitrary decision being made by a judge, with no further input from the parties after their respective cases have closed.

3. Recognition and retention of traditional courts in South Africa

In the exercise of their jurisdiction as mediators, the courts of chiefs and headmen are similar to the Lok Adalats and Panchayats of India. The similarity is especially evident in the procedures and mechanisms employed in the courts and the participation of the councillors of chiefs and headmen in resolving conflict within parochial areas. It was only in 1927 that these courts were officially recognised.[2] Bennett regards the aim of this enactment as the need to build up an African tradition (Bennett 1991b:115).

The next stage of reorganisation of these traditional courts took place in 1986 consequent upon the recommendations of the Hoexter Commission (1983). The following reasons were advanced by the Hoexter Commission (1983:Part I, par 3.4.3.8) for retaining only the courts of chiefs and headmen of all the structures of 1927:

> Although in many respects the chiefs courts function imperfectly their retention is widely supported both by Blacks and by experts in Black customary law. These courts represent at once an indigenous cultural institution and an important instrument of reconciliation. For these reasons a rural Black will often prefer to have his case heard by the chief s court.

The establishment of Commissioners courts requires some description and explanation for the sake of completeness in the discourse on traditional conflict resolution. A negative factor in the existence of these courts (the presiding officers of which were white) was that Africans were being subjected to a far lower standard of justice than practised elsewhere (Bennett 1991b:81, note 11). The Hoexter Commission (1983:Part V, par 6.1) called for the scrapping of racially separate courts:

> That inhabitants of the same country should purely on the grounds of race be criminally prosecuted in separate courts for any offence whatever is, in the Commission s view, by any civilised standard, unnecessary, humiliating and repugnant. The Commission is satisfied that *with the exception of courts of chiefs and headmen* [emphasis added] the policy of separate courts for Blacks is outmoded and obsolete.

The retention of jurisdiction by traditional courts, however truncated, over certain matters is indicative of the entrenched position occupied by these courts in traditional society, and any alteration to the status quo would have been unwarranted in the circumstances. However, commissioners courts have now been abolished with their judicial functions assumed by magistrates courts. This reform has brought with it other problems. Bennett (1991b:82, note 11) points out that although all courts in South Africa may apply customary law —

> Unfortunately these new powers were not complemented by the intimate knowledge of African affairs which gave commissioners their special expertise in African litigation. In the circumstances, magistrates courts cannot be described as accessible to African litigants.

4. Traditional courts and modern courts

In theory a party to a dispute could resist the intrusion of civil law especially where a claim is founded on the traditions of a particular group. However, this does not mean that there would not be occasions where traditional norms will conflict with those of civil society. In that event it would be imprudent to predict the approach that would be adopted by the Constitutional Court in treading its way through a veritable minefield, especially where gender equality and other sensitive issues are involved.

The methods of conflict resolution employed in traditional courts are not unique to South Africa, but are mirrored elsewhere in traditional societies in Africa, Asia and Australia. The debate in South Africa, however, will be whether these methods can or should be extended to cases that did not previously fall under the umbrella of traditional courts, or whether the supremacy of contemporary western-style courts should be maintained. The point worth noting in this debate is that the majority of the population of the country is rural and conceivably still wedded to tribal lore and culture. Even where they reside and work in urban areas, the same appears to be true.

Traditional courts have a major advantage in comparison with other types of courts in that their processes are substantially informal and less intimidating, with the people who utilise these courts being more at ease in an environment that is not foreboding.

Keesing describes the process of settling cases out of court as informal litigation which underlines the need to look for more subtle and undramatic legal processes

side by side with more formal legal systems (Keesing 1981:322). The headmen or chiefs who preside over traditional courts are generally charismatic and familiar with the populace that use the courts, are revered to an extent that judges are not, are wont to play an active role in the proceedings and are not shy to suggest mediation at almost any point in the proceedings in matters susceptible to that form of resolution.

Contemporary courts that are western-orientated are mired in procedures and processes that do not lend themselves to such activism on the part of presiding officers who may do so at the risk of entering the arena and thereafter being taken on appeal or review by any of the parties or a superior court intervening in the proceedings. In any event, the ethos of these courts is to deter such intervention by judicial officers trained in a different school of precedents, rules of court, statutory interpretation and similar devices designed to attempt justice between man and man. This is not to say that traditional methods of conflict resolution, as they prevail in traditional courts for example, are devoid of the devices referred to earlier.

5. The jurisdiction of the chiefs courts

The jurisdiction exercised by chiefs courts is strictly territorial and is confined to persons resident within a chiefdom , regardless of their tribal affiliation (Bennett 1991b:67). Jurisdiction is also automatically conferred by reason of the defendant being resident within the area concerned. Traditional courts, particularly chiefs courts, enjoyed a junior status in relation to magistrates courts and matters could be taken on appeal to the latter, even though they had not reached finality in the chiefs courts. Bennett points to the undesirability of this overlap in jurisdiction which could lead to forum-shopping and actions being removed from a wrong court to the correct forum, with consequent loss of time and money (Bennett 1991b:69-70).

6. Deficiencies in traditional conflict resolution processes

Criminal matters proceed in traditional courts without a tribesperson being afforded any legal representation. Bennett argues that in the face of such penalties that are likely to be imposed such as banishment or dispossession of land, there ought to be a right of representation although sound reasons exist for the exclusion of legal practitioners from traditional courts. One such reason is the aim to preserve procedural informality and to ensure that neither litigant would be given an unfair advantage by being allowed to engage counsel to argue the case (Bennett 1991b:80).

7. The chief as mediator and final arbiter

The role of the chief was not just restricted to participating in conflict resolution mechanisms, but also to anticipate and, therefore, intercept conflicts. An example of activism by a tribal leader is given by Sansom in his illustration of a Zulu headman applying a criterion of proximity in granting grazing rights (Sansom 1974:141). In making his decision in relation to a particular pasture the headman determines whether the man s kraal is near enough to, or too far from, the coveted grazing land. The Nguni tribesman is forced to pursue his subsistence activities within a zone centred on his kraal (Sansom 1974:141).

Schapera studied the handling of civil and criminal wrongs according to Tswana law and custom (Schapera 1955). In the case of a civil wrong, it is expected that the victim will first look to the wrongdoer for satisfaction by direct negotiation (Schapera 1955:47). Should this fail, then the matter proceeds to the local court, and if necessary, through the hierarchy to the chief s court. The matter is tried at the instance only of the victim or the victim s representative. A criminal wrong incurs the intervention of a traditional court, not necessarily that of the chief which is at the apex of the dispute resolution or adjudication structure. A Tswana chief is also provided with advice from his senior male relatives. They intercede with the chief in the event that a man feels aggrieved by some action or decision of the Chief (Schapera 1955:76). Schapera also notes that all matters of public concern are dealt with finally before a general tribal assembly of the men (Schapera 1955:80).

8. Modern litigation and tribal courts

Abel (1991:83) has drawn attention to the incompatibility of tribal social structures and modern courts:

> The introduction of the latter into the former leads to a decline in tribal litigation . We are constantly rediscovering multiplex, enduring, affective relationships in economic life, in the extended family, within large institutions, in residential groupings, even between criminals and their victims. Tribal litigation is integrative; it preserves and even strengthens those relationships. If courts are modernised, one forum for tribal litigation is removed. Furthermore, the mere availability of modern courts seems to undermine tribal dispute processing elsewhere in the society.

Abel (1991:84) notes that in contemporary Africa there are three major deviations

from the ideal type of modern litigation:

> First, there is a decline in the accessibility of the court to individual litigants, and warning of a much more radical curtailment in the future, as primary courts are thoroughly professionalized. In modern society, where much interaction occurs between strangers who are not bound together by any relationship, individual disputants confronted with an increasingly inaccessible tribunal will simply terminate the relationship — they will lump it . Second, there is growing dominance of the court by criminal prosecution, and especially by administrative offenses, which renders it less attractive to potential litigants. Third, adjudication in modern courts, whether civil or criminal, becomes increasingly superficial — a rubber-stamping of decisions reached elsewhere.

All these factors are absent to a large extent within traditional courts and, instead of replacing or usurping the jurisdiction of these courts, resources should be diverted towards enhancing the visibility of traditional courts as a trusted conflict resolution mechanism. These courts are readily accessible, serve towards restoring and binding the relationship between traditional people and are highly visible with a transparent decision-making process in which there is community participation.

9. The Pedi and conflict resolution

M nnig notes that Pedi tribal law emphasises group relationships and rights rather than those of the individual. Stress is placed on restoring relationships as well as the reconciliation of groups:

> The court takes great pains to reconstruct the cause of any dispute, to show individuals who are not accused how their actions may have given rise to the complaint, and frequently advises the accused that he may have a counter claim. The court always enquires whether the disputing parties have tried to come to a mutual settlement beforehand, and frequently refers a case back to the families involved to attempt by private discussion to resolve their dispute. The accent is always on arbitration rather than on punishment, and the legal institutions of the Pedi have the characteristics of a number of agencies for arbitration on various levels.
>
> (M nnig 1967:308)

Furthermore, the majority of disputes are resolved through the mediation process

within or between family groups . In fact, the latter is the principal vehicle for settling disputes outside the official courts (M nnig 1967:314).

In effect it becomes obvious that only the more serious and complicated cases are referred to the official courts (M nnig 1967:315). M nnig notes, however, that serious efforts are made to settle disputes out of court and matters may be postponed so that the parties involved can secure the assistance of yet more relatives to assist them (M nnig 1967:316).

The Pedi have a highly evolved system of conflict resolution, and parties are actively encouraged to resolve their differences without intervention from the chiefs or their delegates through the medium of family processes as courts of first instance . The processing of the matters through the Pedi hierarchy of courts and related structures takes place as a result of the failure of the conflict resolution process at the lower levels. However, the primary role assigned in Pedi society to maintaining harmony is manifested in fresh attempts in the chief s court to drive the disputants to reconsider resolving differences without intervention.

Another aspect of conflict resolution, the religious manifestation of expiation of guilt, is reported as occurring among two tribes, the Sotho and the Tswana where every sacrifice had to be preceded by a confession of possible strife between family members or neglect of custom (*Weekly Mail & Guardian* 1994a:27). According to tribal custom, the religious aspect took a special turn towards reconciliation when a special ceremony of reconciliation was necessary if a member had quarrelled with the family head, before the ancestors could be approached (*Weekly Mail & Guardian* 1994a:27). Mkhize has referred to the position of ancestors in the context of conflict resolution, noting that family conflicts had to be swiftly resolved lest they incurred the anger of the ancestors and attracted illness or misfortune within the family (Mkhize 1990:21).

10. The Pondo and mat associations

According to Kuckertz the institution of *mat associations* is one of the conflict resolution mechanisms prevalent among the Pondo (Kuckerts 1990). Mat associations are similar to *izithebe* or hospitality groups which Hammond-Tooke had referred to in his study of the Mpondomise (Hammond-Tooke 1975:52). It is through such hospitality groups or mat associations that the distribution of food and drink at social gatherings is organised.

The mat leader is the first person whom a disputant approaches with his problem. Cases are first discussed at the *izithebe* level. Hammond-Tooke indicates, in cases involving two such groups, that the members of the two hospitality groups would meet and attempt to settle the matter between themselves.

Hammond-Tooke also states that most disputes were settled in the courts of headmen (Hammond-Tooke 1975:172). The lineage court endeavours to settle matters between kinsmen in an effort to avoid washing its dirty linen in public, to use the phrase employed by Hammond-Tooke (1975:173). He also described an unusual feature of this court in the use of *ukuzidla*. This is a self-imposed fine and is employed thus:

> If a person realises that he is in the wrong, or it is apparent to him that his fellow lineage members deem him so, he may impose a fine of a sheep, goat or even a beast on himself to indicate his contrition and to wash away his offence. This *ukuzidla* is sometimes also resorted to in the headman s court, constituting an admission of guilt. It is known as *imali yoku zithandazelo* (money of begging for mercy) and is an indication to the court of the sincerity of repentance. In a case where the guilty party imposes a fine on himself that the members of the *inkundla* regard as inadequate, they regard this as proof that he is not really sorry, and may increase the fine; on the other hand, if he fines himself too heavily, they are likely to reduce it.
>
> (Hammond-Tooke 1975:173)

It is clear that the *izithebe* are unable to compel a statement. This power to compel obedience was a preserve of the court of the headman to which the matter would ordinarily proceed in the event that it remained unresolved (Hammond-Tooke 1975:53). In the event that the person remains dissatisfied, one of the options available is to refer the problem to the court of the wardhead, thence to the chief. This accompanies a request to establish a separate mat association which, in effect, secedes from that of the leader whose conduct is the subject matter of the complaint (Kuckertz 1990:87).

The dissatisfaction is expressed publicly to the chief in a tactful manner (Kuckertz 1990:87-88). What emerges is that the conflict is avoided by the subtle, diplomatic use of language designed to achieve secession, with the reluctant approval of the chief, who, at the same time, is faced with a *fait accompli*. The chief, therefore, has little option but to acquiesce in the announcement as, in all probability, it represents the wishes of the majority of those affected.

Proceedings in the chief s court are formal when compared to those of the preceding court of a headman. The emphasis is no longer on mediation and reconciliation, but on the correlation between testimony proving culpability and the sanctions imposed by the court. This is the most important difference between the lower courts (which proceed on the assumption of, or work for, the restoration of mutual trust) and the chief s court (Kuckertz 1990:144-145).

Quite apart from the role of mediators in small-scale conflict resolution, such as those within families or between neighbours, conflict resolution mechanisms emanate substantially from courts of headmen and chiefs in all the traditional societies of South Africa. These courts enjoy some formal structure in terms of their method
of operation albeit they frequently operate from backyards and beneath trees. The South African judicial system accorded formal recognition to these courts (South African Law Reports 1960(3):490E (R v Dumezweni)).

It could be said that the geographical distance between the courts is equalled by the gulf that widens between the parties as they progress towards these courts. In the process a social conflict is transformed into a legal case with a suprasocial (abstract) correlation between an offence and its punishment (Kuckerts 1990:151).

As far as possible small-scale conflict should be resolved closer to home . Once the adjudicatory process fails at a local level, the progress of the conflict becomes embroiled in legalities, the eradication of which will not necessarily leave the parties at peace with one another. This is accentuated by the growing distance between the parties, on the one hand, and the adjudicators on the other. There is not the same degree of familiarity between the disputants and mediators at a more parochial level, such as the homestead heads and mat leaders, as with the headmen and chiefs. Krige (1950) refers to a similar system of conflict resolution among the Zulu.

11. Cleansing and other forms of conflict resolution

A more recent example of cleansing and expiation involves the debacle following upon a visit by President Mandela to Ulundi to meet with the King of the Zulus. Supporters of the Inkatha Freedom Party (IFP), the leader of which is Chief Mangosuthu Buthelezi, demonstrated against the visit outside the palace of the king. Chief Buthelezi is both a minister in the Government of National Unity and Prime Minister to the Zulu King. A news report states that Chief Buthelezi had offered the

king two head of cattle as a self-imposed penalty for the demonstration by the IFP supporters at the meeting of the two leaders (*Weekly Mail & Guardian* 1994c:2). The report specifically alludes to a resolution of the matter along traditional lines where if the monarch had accepted the cattle, both would have probably been present at a cleansing ceremony where the hatchet would have been buried (*Weekly Mail & Guardian* 1994c:2). It is obvious, therefore, that the status of the disputants is irrelevant to the traditional processes involved in the resolution of the conflict.

In a similar context Van der Vliet (1974:224) refers to family conflict resolution and discusses the case of a parent being neglected:

> A commonly used sanction, particularly in the hands of the peer group, is mockery or ridicule, often in the form of chants or songs. The threat of ostracism is also a powerful force for conformity. As in our society, bogeys and threats of supernatural punishments are often resorted to in an attempt to frighten a child into obedience.

Clearly these are not adjudicatory mechanisms at work in resolving conflict, but the obvious end is the same, and that is to restore a balanced relationship and thus to intercept conflict and discord.[3]

12. The impact of the Constitution

Though chapter 12 of the Constitution of the Republic of South Africa (Act No. 108 of 1996)[4] provides for the recognition of traditional authorities and indigenous law, reservations have been expressed about the future of traditional leaders and customary and indigenous law in the light of chapter 3, relating to Fundamental Rights. Bennett (1993:37) anticipated these concerns and stated that

> with growing political power, Africans are demanding the repatriation of their culture from the province of western scholarship. In summary, culture is in the process of being rehabilitated. This does not mean that a bill of rights should be abandoned . Specific issues, such as amelioration of the status of women and children, may be addressed in a bill of rights without implying that an entire cultural heritage is to be overthrown. If the failures of past legislative reforms in Africa teach us anything, it is that programmatic and thus gradual change is more likely to succeed.

Referring to the African National Congress Bill of Rights and the Bill proposed by the South African Law Commission in respect of the provisions relating to gender equality, Bennett commented that enforcement of gender equality would involve a complete overhaul of the present system of customary law (Bennett 1991a:26). This would be anathema to the proponents of customary law and adherents to tribal traditions in South Africa, especially in view of the far-reaching consequences it would entail to giving women equal rights to property, powers of joint decision-making, and freedom from physical assault (Bennett 1991a:26-27). Whilst it would be presumptuous of any person to prescribe a solution to the potential for conflict between customary law and the modern jurisprudence of human rights, Bennett (1991a:32) concludes that the

> most powerful argument in favour of sustaining customary law, and hence allowing free pursuit of cultural rights, is that this law (provided it is modified to take account of prevailing sentiments) endorses current social practice, and therefore rests on a foundation of popular acceptance . The present talk about human rights has an echo of the 1960s, the heady days of law and development and law and modernisation , when it was believed that customary law was primitive and backward and should be swept aside to make way for a brave new legal order imported from the West. The failure of these schemes to take root and to transform the newly independent African nations into images of their European and American benefactors has bred a certain respect for the resilience of local cultures.

So there is yet the prospect that our indigenous systems of law and the accompanying conflict resolution structures will survive the human rights legislative and judicial onslaught.

Channock (1991:68-69) expounds upon what emerges as a problem on the part of South African lawyers who will be forced to confront the existence of another system of law alongside that in which they have been trained:

> South African lawyers, the products of an authoritarian state and legal system may have difficulties in rethinking their model of the legal world, in which the state s law stands in an hierarchical relationship to a wide variety of customs, and in which courts render authoritative decisions which have far-reaching effects on behaviour. Courts, as Galanter points out, deal with only a small fraction of disputes, and most of these are settled by negotia-

> tion by parties using bargaining endowments given by law, as well as by culture.

13. Is there a place for traditional leaders in the new South Africa?

During multi-party constitutional negotiations in 1993, traditional leaders were not slow to vent their concerns at a Bill of Rights that would undermine them. A newspaper report at the time stated that the traditionalists — kings, chiefs and headmen — are worried that the proposed bill of rights, drawing heavily on western principles of equality, will undermine their authority (*Sunday Times* 1993:18). After listing a series of burning questions , the report quotes a chief as stating that

> there are serious problems if the law says all citizens, including chiefs, kings and ordinary people, are equal in status. There are also serious problems presented by the clause which says there shall be no discrimination based on race, gender and creed.
>
> (*Sunday Times* 1993:18)

The Interim Constitution has been so negotiated as to take account of the realities that prevail in the many traditional communities which still exist in the mainly rural areas of the country. Therefore, it is not surprising that a role for traditional leaders at both the national level and the provincial level has been enshrined in the Interim Constitution (1993) and the Constitution of the Republic of South Africa (1996). The role of traditional leaders will be reinforced by such structures as their courts and cultural norms in terms of which their pre-eminent positions as mediators and judges are acknowledged. This recognition of traditional leaders in the Constitution also amounts, to an extent, to their political rehabilitation. In the past the State President was entitled to appoint chiefs and headmen, a power which was often used for political expediency.

Sachs (1973:96-97) provides a different perspective to the tribal administration of justice and states that

> in traditional African society every man was his own lawyer, and his neighbour s too, in the sense that litigation involved whole communities, and all the local men could and did take part in forensic debate . When pre-judicial attempts to resolve disputes failed, the arguments could be pressed to judgement before the chief, whose word was law; but the chief

> invariably acted as spokesman for his councillors, who in turn sought to uphold and reinforce the established norms of the tribe.

Sachs (1973:96) also describes the quintessential role of the chief in maintaining harmonious relations between his charges thus:

> (I)n this context the good chief was reckoned not by the terror he could inspire or the magnanimity he could display, but by his skill in articulating the sense of justice (just-ness) of a relatively homogeneous community, which involved his applying universally accepted rules and precedents to particular disputes in a manifestly appropriate way.

Sachs illustrates this point in his reference to Chief Albert Luthuli, once President of the African National Congress as well as chief of his tribe at Groutville on the north coast of KwaZulu-Natal. Chief Luthuli derived great pleasure from trying cases, and enjoyed both the debate and the reconciling of people at variance with each other (Sachs 1973:115).

Methods of dispute and conflict resolution as extant in traditional courts of South Africa do not slavishly follow precedent. Indeed, it may even be argued, the failure to follow precedent was a criticism of the methods of resolution employed indigenously. However, those who utilise such courts do so out of choice in many cases, and believe that they have more in common with the adjudicators and methods of adjudication, in contrast to the prevailing judicial system. In any event, it would be expensive and a gross waste of time and resources to use the fine tuned dispute resolution methods that prevail as alternatives to the conventional judicial system. Those conventional methods are designed largely as alternatives to litigation in an urban western context for complex cases where literally time means money .

14. People s courts and informal justice

This form of conflict resolution has emerged in relatively recent times. People s courts are not recognised by the government, but function mostly in urban areas, sometimes under the aegis of civic organisations. The creation of people s courts, a feature of the previous decade, has been ascribed to a rejection of apartheid structures and an attempt to return to the precepts of African communitarianism: of participation and consensus in all aspects of life as happened elsewhere in Africa at the time of independence (Radipati 1993:25). These courts are neither indigenous nor are they traditional but are so deeply entrenched in the architecture of informal

justice in peri-urban areas as to warrant brief consideration.

Radipati has stated that indigenous dispute resolution institutions in urban areas were Europeanised to the extent that there were two groups of Blacks, rural and urban. The former alone continued to enjoy access to their customary law and institutions (Radipati 1993:24). He has also suggested that urbanised Blacks, through the virtual non-availability of such structures as well as their proximity to formal law institutions, were serviced by informal dispute resolution structures such as civic associations (Radipati 1993:24).

Hund and Kotu-Rammopo (see Radipati 1993:24) refer to *Makgotla* (people s courts):

> in the rural areas still governed by indigenous law and custom . Cultural movements also exist in the townships, and some of these have taken over as part of their function peace-keeping and dispute-settlement activities.
>
> (Bennett 1991b:91)

In a report entitled *Return of the kangaroo court*, a national newspaper records instances of summary justice, which, according to one source, are the clearest message that there is still a lack of confidence in the police, magistrates and the judiciary (*Weekly Mail & Guardian* 1994b:12). The same report also points to a sense of frustration on the part of the communities involved with the provisions of the Criminal Code as well as the Bill of Rights which have apparently led to a more lax approach in matters of bail for those whom local communities perceive as notorious. Also, there appears to be a reluctance of township dwellers to utilise formal structures and most township dwellers turn instead to unofficial agencies of justice such as *makgotla* and also, perhaps increasingly, to other more drastic forms of self-help and violence (*Weekly Mail & Guardian* 1994b:12).

Bennett (1991b:105) draws a distinction between people s courts and the *makgotla* as follows:

> Political allegiance aside, the makgotla never claimed validity or recognition beyond the communities in which they operated, whereas, at least according to the police, this was an implicit ideal of the people s courts. Makgotla in consequence tend to complement state structures rather than to challenge them.

Seekings (1992:194) uses the example of the court in Guguletu township in the Cape Province (now Western Cape) which appears to illustrate the more acceptable

face of informal justice :

> In an apparently typical case, a young man was charged with harassing, and finally stabbing (but not too seriously) a young woman. After consideration, the young man was ordered to pay a fine, perform community service, and undergo counselling. A local civic leader described the court s role as reconciliatory rather than enforcing an eye for an eye mentality .

The sentence imposed demonstrates an innovative approach which even courts in the conventional judicial structure could do well to emulate.

The description of popular justice provided by Bennett (1991b:61) is instructive:

> Popular justice is rooted in democratic principles, in particular trial by peers in an elected tribunal. So far as possible the tribunal is stripped of legal formality and of any past association with oppressive state institutions.

15. Summary and conclusions

Some of the mechanisms for the resolution of conflict within the traditional societies of South Africa have been explored. Reference has been made particularly to the processes in Pedi, Pondo and Tswana society, to name a few, which are representative of similar mechanisms for resolving conflict within the other traditional groupings in the region. This has also involved a comparison of western processes with their African counterparts. The role of traditional leaders has also been scrutinised as, to an extent, has been the case with informal justice machinery such as people s courts. Thus methods of conflict resolution ranging from the rudimentary to the relatively sophisticated have been considered.

What is common to all these traditional societies is the desire to contain conflict and therefore the potential for disruption. The lifestyles of the members of these societies, be they members of a small band of Khoisan or a large tribe of Pondo, could take a number of forms of disruption in the event that conflicts were allowed to fester. Thus, there would have been feuds and the secession of disenchanted members, to name just two possibilities. Family councils and traditional courts are but the means employed by the traditional societies, as well as their increasingly urbanised counterparts, to maintain and preserve harmony. To this end, these structures have functioned fairly effectively, by and large. In a rural or tribal setting, it would not take much for a simple breakdown in individual relationships to quickly

develop into a feud or worse. In an urban setting, people living cheek by jowl, as well as the historical inequities of the apartheid era, would provide a fertile basis for an assault or dispute or other like conduct to escalate out of control. The existence of traditional courts has historically intercepted such escalation of conflict and demonstrated the need to harmonise relationships at a macro level because these, of necessity, impact upon the greater whole.

The procedures of conflict resolution practised by the various indigenous societies in South Africa have received a new impetus with the migration of rural people to the urban areas and the establishment of the interim and the new constitution. For the first time in our constitutional history a role for traditional leaders in decision making has been enshrined, although in an advisory capacity.

The conflict resolution procedures practised by our indigenous societies will be influenced substantially by social developments in South Africa and will also infuse the latter with ideas around which community conflict resolution centres can function in addition to other work that they render.

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NOTES

1 This article has been extracted from Adv R.B.G. Choudree s unpublished LL.M. dissertation (Choudree 1996), submitted at the University of Durban-Westville, Durban, South Africa.

2 Through the device of the Native Administration Act No. 38 of 1927.

Grappling with the Past: The Truth and Reconciliation Commission of South Africa

Mark Hay[1]

ABSTRACT

South Africa s past has to be grappled with, courageously and penetratingly. Especially its recent decades of human rights violations inflicted by the injustice of apartheid, have to be confronted frankly and constructively. In the light of what other countries have done, South Africa opted for a Commission that would do its utmost to uncover the truth and to contribute towards reconciliation. Using as a frame of reference the demanding objectives that had been set for this Commission, this article presents a brief discussion of the functioning of the Commission and an initial assessment of its achievements. The overwhelming and almost impossible task, further complicated by practical and psychological limitations, is taken into consideration. What has nevertheless been accomplished, is duly recognised and appraised. Preliminary conclusions are given for the ongoing responsibilities of respect, reparation and reconciliation. These do not only apply to South Africa s road ahead, but also to all situations where truth has to be revealed and people have to be reconciled.

No healing is possible without reconciliation,
and no reconciliation is possible without justice,
and no justice is possible without some form of genuine restitution.
Beyers Naud

> The President [Mandela] believes — and many of us support him in this belief — that the truth concerning human rights violations in our country cannot be suppressed or simply forgotten. They ought to be investigated, recorded and made known. Therefore the President supports the setting up of a Commission of Truth and Reconciliation. The democratic government is committed to the building up of a human rights culture in our land.
>
> There is a commitment to break from the past, to heal the wounds of the past, to forgive but not to forget and to build a future based on respect for human rights. This new reality of the human rights situation in South Africa places a great responsibility upon all of us. Human rights is not a gift handed down as a favour by government or state to loyal citizens. It is the right of each and every citizen. Part of our joint responsibility is to help illuminate the way, chart the road forward and provide South Africa with beacons or guidelines based on international experiences as we traverse the transition. We must embark upon the journey from the past, through our transition and into a new future.
>
> (Omar 1998)

In introducing the Truth and Reconciliation Commission (TRC), the Minister of Justice, Dullah Omar, laid out the path that South Africa would follow to deal with the legacy of the past. It is a path that has been characterised by controversy and difficulties. There were a number of options available to the government with respect to dealing with the past, the most politically expedient being amnesty for all perpetrators, but it was rejected in favour of concern for victims.

> I could have gone to Parliament and produced an amnesty law — but this would have been to ignore the victims of violence entirely. We recognised that we could not forgive perpetrators unless we attempt also to restore the honour and dignity of the victims and give effect to reparation.
>
> (Omar 1998)

1. PRECEDENTS

International experience has shown that addressing past human rights violations is a necessary step in the process of reconciliation and nation-building (Wong 1996:1). According to Hayner the purpose of such action, often at the moment of political change or transition, is to demonstrate or underscore a break with a past record of human rights abuses, to promote national reconciliation, and/or to obtain or sustain political legitimacy (Wong 1996:3). Many countries set up official investigations to deal with human rights abuses, particularly since 1991, the year when the Chilean Commission on Truth and Reconciliation published its report. The Chilean Commission marked a turning point in that it became a model for future commissions. Its final report is a comprehensive two volume work which documents abuses and murders in the period of ex-president Pinochet (Truth and Reconciliation Commission 1993). The changes in Third World countries and the Eastern block countries have resulted in more such commissions. Countries such as Israel, Guinea, Uganda and Argentina[2] established commissions to deal with past human rights abuses. Since 1991, there have been about 30 commissions (Bronkhorst 1995:10) in countries such as Chad, El Salvador, Honduras, Sri Lanka and Thailand. Each of these has met with limited success (Bronkhorst 1995:69-77).

In the Eastern European countries, due to their particular circumstances, the commissions developed differently in that there were no truth and reconciliation commissions established, but rather procedures were established to clear or denounce individuals by investigating the material in the files of the former security regimes. This is known as lustration (Bronkhorst 1995:77).[3] Former East Germany, the Czech Republic (while still part of Czechoslovakia), Bulgaria, Latvia and Estonia are some of the countries that have entered this process, with the Czech Republic carrying out the most lustration (Bronkhorst 1995:78-82).

All of the commissions and lustration processes above were not conducted without difficulty or controversy. For example, the truth commissions were not able to recover all the facts of the disappeared or the dead, and there was no full justice rendered with regard to perpetrators. Victims and their families felt cheated by the compromises that were made without their consent.

One such case was in Chile, when President Aylwin set up the commission after sixteen years of military dictatorship. He was convinced that for there to be national reconciliation, there had to be a process of truth and justice for the country. But, he said, we were well aware that full justice is not always achievable and that both

justice and prudence must be harmonised (P. Aylwin in Boraine & Levy 1995:39). As president, and on behalf of the nation, he publicly apologised and requested forgiveness from the families of victims. People felt cheated by this, for they knew that he himself was not responsible for the human rights abuses, and that he was letting perpetrators off the hook (Boraine & Levy 1995:42).

The lustration process can also be very risky as documents and files can be altered (by the previous regime before losing power, or by members of the previous regime employed in the new dispensation) and innocent people could be condemned unjustly. A journalist in Poland noted that he would prefer to see a few bastards go unpunished to punishing huge numbers of innocents (Bronkhorst 1995:78).

It is from this background of international experience that South Africa attempts to deal with the past. It is a brave attempt in uncharted territory of a national process of reconciliation.

2. THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA

> Nevertheless, [reconciliation] as a product of negotiated revolution, the newly elected democratic government understood that there was no certainty that it could succeed in imposing victors justice, even had it wished to do so. It faced the risk that to test the limits of the political balance of forces in order to punish individuals would result in what has been called justice with ashes .
>
> (Asmal, Asmal & Roberts 1996:18)

There have been some forerunners to the Truth and Reconciliation Commission in South Africa. A legal commission was set up under Richard Goldstone, a judge in the court of appeals, to investigate the causes of violence in the country. *The Goldstone Commission of Enquiry* identified, among other things, death squad activity within the police force in KwaZulu-Natal. A number of ancillary reports and investigations were released, and some were strongly criticised for not allocating responsibility for the causes of the violence (Asmal et al 1996:82).

The African National Congress (ANC) set up a number of internal commissions to deal with allegations concerning those who had been imprisoned by the ANC (the *Skweyiya Commission*, 1992), and the human rights abuses committed by ANC

cadres in exile in the 1980s (*Motsuenyane Commission*, 1993). The reports found certain allegations to be true and it revealed the identities of those suspected, but the ANC failed to discipline the perpetrators or remove them from leadership positions (Asmal et al 1996:82).[4] The ANC then called for a commission which would investigate all human rights abuses by all parties.

Background to the Truth and Reconciliation Commission

There has been no argument about South Africa s need to make a new start and the need for healing as a nation. The question centres on the how of the process. Two conferences, organised by Justice in Transition, were held in 1994, both in Cape Town, to explore how to deal with the past. The first conference, in February, had its proceedings recorded in a publication, *Dealing with the Past* (Boraine, Levy & Scheffer 1994). Invited participants from Eastern Europe and South America shared their insights with the conference, raising pertinent questions and issues. A second conference was held in July, this time focussing on gathering a broad section of South African participants and organisations. Most political organisations (from both sides of the political spectrum) opposed the idea of a truth[5] commission, and did not send delegates (Boraine & Levy 1995:xxii-xxiii). The proceedings of the conference were recorded in *The Healing of a Nation?* (Boraine & Levy 1995). The Justice Portfolio Committee[6] developed and wrote up the bill which eventually became law.[7] Initially promulgated to cover the period from 1 March 1960 (the month of the Sharpeville massacre) to 5 December 1993,[8] the stated purpose of the Act is

> ... to bring about unity and reconciliation by providing for the investigation and full disclosure of gross violation of human rights committed in the past.
>
> It is based on the principle that reconciliation depends on forgiveness and that forgiveness can only take place if gross violations of human rights are fully disclosed. What is, therefore, envisaged is reconciliation through a process of national healing.
>
> (Truth and Reconciliation Commission 1998a)

It hoped further to ... find a balance between the process of national healing and forgiveness, as well as the granting of amnesty as required by the Interim Constitution (Truth and Reconciliation Commission 1998a). The Act is a compromise which resulted from the agreements of the negotiation process at Kempton Park between particularly the ANC and the regime. It was in both their interests to see that there would be provision for amnesty for themselves. The Act is, in many

ways, the result of political manoeuvring.

Some from the liberation movement hoped that dealing with the past would enable some concrete outcomes, as noted by Asmal et al (1996:10):

- it will enable us to achieve a measure of justice for the victims of our horrific past by acknowledging the atrocities that they suffered;
- it will provide a basis for a collective acknowledgment of the illegitimacy of apartheid;
- it will facilitate the building of a culture of public ethics for the first time in South Africa and it will make room for genuine reconciliation;
- it will provide a basis for the necessary decriminalisation of the anti-apartheid resistance;
- it will ensure a sound basis for corrective action in dismantling the apartheid legacy;
- it will lay bare the roots of the violence that still plagues parts of the country;
- it will illuminate the longstanding humane values of the anti-apartheid resistance, for so long distorted by apartheid propagandists;
- it will demonstrate the morality of the armed struggle against apartheid;
- it will establish and underpin a new equality of all citizens before the law;
- it will place property rights in a secure and legitimate footing for the first time in our nation s history;
- it will enable privileged South Africans to face up to collective understanding of, and therefore, responsibility for a past in which only they had voting rights;
- it will offer an acknowledgement of the wrongs done to the countries of southern Africa in the name of our country;
- it will clarify the important international implications of apartheid in the past and present, as well as acknowledging the correctness of international mobilisation against apartheid; and finally,
- it will allow for a necessary process of historical catharsis as the previously excluded speak at last for themselves, and the privileged caste joins the South African family for the first time.

3. OBJECTIVES AND FUNCTIONING OF THE COMMISSION

In order to promote the objectives of the Commission there were three committees

which were to pursue its objectives in a complementary manner. Each had its own area of focus:

- Committee on Human Rights Violations (SA Act 34/1995:[9] sections 12-15);
- Committee on Amnesty (SA Act 34/1995:sections 16-22);
- Committee on Reparation and Rehabilitation (SA Act 34/1995: sections 23-27).

There was also an investigative unit (SA Act 34/1995:sections 28-35) whose task was to conduct investigations necessary to complete the objectives of the Commission.

> The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past .
>
> (SA Act 34/1995:section 3(1))

The objectives are focused on national unity and reconciliation as opposed to the conflict and division of the past. Neither of the two terms, national unity or reconciliation , is defined by the Act. Their meanings are not self-evident, particularly the latter. National unity would imply the opposite to the conflict and divisions of the past . It would, therefore, be possible to measure to a limited degree its success through gauging levels of conflict and co-operation.

Reconciliation is a much more elusive concept to capture. Since the Act does not define what it means by reconciliation, it would be difficult to evaluate whether the TRC has achieved its goal. This is probably one of the most serious defects of the Act. It is possible, however, to extrapolate from the four main objectives of the Commission what reconciliation would imply.

First objective

> Establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period ... including antecedents, circumstances, factors and context of such violations, as well as perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings ...
>
> (SA Act 34/1995:section 3(1)(a))

This first objective has as its goal a comprehensive investigation of the past *gross violations of human rights*[10] with a view to gaining complete record for history. This is important, for it establishes a common memory of the past, for:

> A society cannot reconcile itself on the grounds of a divided memory. Since memory is identity, this would result in a divided identity. In South African society, for example, there may not be a shared opinion as to how deaths in custody took place. It would be thus important to reveal the truth so as to build a moral order.
>
> Clearly, key aspects of the historical and ethical past must be put on the public record in such a manner that no one can in good faith deny the past. Without truth and acknowledgement, reconciliation is not possible.
>
> (J. Zalaquett in Boraine, Levy & Scheffer 1994:13)[11]

This history of the past is also gained by investigations and hearings for both victims and perpetrators. This bringing forth the truth of the past is important, for:

> The objective of regimes that persecuted and assassinated thousands of people was to silence the opposition. Impunity for the authors of those crimes is a renewed form of silence and secrecy directed towards the survivors, the families of the victims and the memory of those who died.
>
> (P. Tappat de Valdez in Boraine & Levy 1995:77)

One dare not forget nor silence the past, for this too easily allows the future to repeat the horrors of the past. Therefore, ... rather than forgetting, we need to intensify the process of remembering — not to undermine the process of reconciliation, but to encourage it and give substance to democracy (A. Odendaal in Boraine & Levy 1995:17). It is out of the experience of the past, then, that the future is to be built.

Second objective

The second objective is achieved by:

> Facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirement of this Act .
>
> (SA Act 34/1995:section 3(1)(b))

This is probably the most controversial clause of the whole Act. A compromise is reached where, in return for the complete truth about the past, perpetrators will be granted amnesty.[12] Full disclosure would achieve a number of goals:

> Firstly, it is psychologically vital for the families of the victims of human rights abuses to come to grips with the circumstances under which their loved ones were abducted, tortured and assassinated. In addition to the cathartic effect of such knowledge, the families and surviving victims must be entitled to suitable compensation for their hardships, anguish and deprivation.
>
> Secondly, it is essential that the perpetrators be identified and isolated, not necessarily for the purpose of retribution and punishment, but more importantly to ensure that they are never again placed in a position of power to repeat their inhuman acts.
>
> Thirdly, the enormity of the crime of apartheid as a system of social engineering must be revealed in all its nakedness, including the distortions wrought upon some of those who, in their fight against this evil, lost their way and engaged the very human rights violations so systematically practised by their oppressors.
>
> (Human Rights Commission 1993)

One argument against the Commission is that it does not have the power to prosecute, but can only make recommendations to the appropriate legal authorities. This is made even worse when the search for the truth of the past is separated from justice. Juan Mendez, an Argentinean lawyer, learnt that truth is not always easy to establish.

> The truth does not necessarily emerge from a commission or an exercise in truth telling. In fact, I would argue that it is misguided to separate truth and justice because prosecutions provide a measure of truth that is more complete and more undeniable than that which is achievable through a truth commission.
>
> (J. Mendez in Boraine et al 1994:89)

On the other hand, Asmal et al (1996:19) note that —

> The particular kind of credibility that derives from criminal trials may be inappropriate for historical verdicts. The necessity to prove the minutiae of individual cases beyond a reasonable doubt in an elaborate and formal

> process can establish an uneven playing-field in favour of the perpetrators; and it can constipate historical debates. Moreover it is common knowledge that there is often a difference between a criminal verdict of not guilty and an affirmative finding of innocence. Thus history suffers if viewed through a judicial lens.

In order to overcome this problem South Africa has no current blanket amnesty law, unlike many South American countries. The granting of amnesty is intrinsically linked to the TRC process, where there is a strict and individualised application particularly around what constitutes political objectives and full disclosure (Wilson 1995:45). Amnesty can be refused.

Probably the greatest difficulty with the granting of amnesty is the less publicised procedure of indemnifying the state itself from civil claims.

> The Commission will remove citizens rights to civil claims for damages: if a former government agent is granted amnesty by the amnesty committee, then the state will be automatically indemnified for damages.
>
> The State becomes a silent partner, shadowing each perpetrator who comes forward and whose amnesty request is successful. To achieve amnesty, the perpetrator does not even need to express remorse, only to convince the amnesty committee that the acts were associated with a political objective and that a full disclosure has been made.
>
> (Wilson 1995:44)

Brandon Hamber, of the Centre for the Study of Violence and Reconciliation, expressed concern about a lack of remorse on the part of perpetrators. The spirit of forgiveness, which has characterised the evidence of many victims, could be endangered as the horrific details of human rights abuses emerge from the amnesty hearings. It is going to evoke a different type of response. It will make talking of forgiveness more difficult particularly if people are just there to get amnesty and not to show remorse. [13] It may, therefore, be necessary to have a combination of forgiveness and justice if there is no repentance (Zalaquett in Boraine et al 1994:47). This combination needs to be tempered by reality. Part of this reality is that in the compromise of the Act there is a certain reciprocity.

> Reciprocity in South Africa lies in the balancing of remuneration and amnesty in the functions of the commission. Survivors tell their story in

> public, have it officially recorded, and they may receive reparation. Perpetrators also construct their narrative and may receive amnesty from civilian and state prosecution.
>
> In the balanced exchange of receiving compensation and renouncing vengeance, this reciprocity parallels and reinforces the exchange inherent in a revitalised social contract, where the individual gives up his or her right to retribution for the past in return for protection and stability in the future.
>
> (Zalaquett in Boraine et al 1994:47)

The question is whether the common good (in this case, future stability and peace) overrides the individual s right to justice in the rule of law, as in the case of the Biko and Mxenge families (Zalaquett in Boraine et al 1994:53-54). The Constitutional Court ruled in favour of the common good. This meant that for the sake of the stability of the future of the country, amnesty would be offered to the perpetrators. This meant that there is no punishment, for example, imprisonment, of the perpetrators, and that the victims have to suffer because they cannot ensure that justice is served. The appearance is given that the victims are once again further victimised and undergo additional suffering for the sake of national reconciliation.

The difficulty of the amnesty clause rests in the fact that it lacks reparative or restorative justice on the part of the perpetrator. The state takes responsibility for reparations, and effectively cuts the perpetrator out of being obligated to participate in restorative justice. The state takes over the responsibility of the perpetrator. Victims seem to want the perpetrator not simply to be granted amnesty, but to participate in some form of restorative justice.[14]

One other consideration is that the state would not be able to prosecute even a small number of the human rights abuses committed since 1960, for it would tie up the courts for years (Wilson 1995:42). Yet, should any *crimes against humanity* be identified, then they would be prosecuted, without any possibility of amnesty or pardon. There are duties that are laid down by international law. However, international law imposes on governments the duty to always investigate and punish certain particularly serious crimes (Zalaquett in Truth and Reconciliation Commission 1993:xxxi). Bronkhorst (1995:152) argues that ... no true reconciliation is possible unless there has at the very least been the chance to bring the worst offenders to justice.... Amnesty International states this position even more forcibly: amnesty is only acceptable after the due process of law has been properly completed .

Third objective

The third objective is achieved by:

> Establishing or making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them .
>
> (SA Act 34/1995:section 3(1)(c))

It is very important to listen to victims[15] and their families. First and foremost, the victims are to receive the utmost respect and attention.

> The Chilean commission interviewed thousands of relatives of people who were killed or who disappeared after arrest. It is very important to listen to relatives respectfully and to let their voices be heard. We decided to include a whole chapter with selected excerpts from their testimony, particularly those illustrating different aspects of the process of repression, the personal loss they suffered, their feelings, their struggle to find out the truth.... They developed a trust in the commission and most of them let out, for the first time, feelings and emotions they had never expressed before.
>
> (Zalaquett in Boraine & Levy 1995:53-54)

Judith Lewis Herman, in *Trauma and Recovery*, notes the unfortunate situation that often people take the side of the perpetrator rather than the victim.

> It is very tempting to take the side of the perpetrator. All the perpetrator asks is that the bystander do nothing. He appeals to the universal desire to see, hear and speak no evil. The victim, on the contrary, asks the bystander to share the burden of pain. The victim demands action, engagement and remembering.
>
> (Herman 1992:7-8)

The victim always forces the bystander to make a choice, not to be neutral, because of the very human nature of the narrative. Where in the past the victim was shunted away, ignored or not taken seriously, there is now a conscious shift to respect the victim s dignity and honour. The worth and dignity of those victimised need to be re-established. Part of this is the right to a full investigation and redress (Bronkhorst 1995:100[16]).

A word of caution has been raised about victims identifying perpetrators by name. As the Commission is not a court of law, it refrains from officially naming perpetrators, as the due process of law would not be observed according to the rule of law or internationally accepted human rights principles. It would hand over names of alleged perpetrators and evidence from its investigations to the courts.

> Presumption of innocence and guarantees for alleged perpetrators must be meticulously observed, taking every precaution to avoid even the appearance of disrespect for such principles. Otherwise an incorrect message will be sent to the people — that in the name of doing justice one may incur an injustice.
>
> (Zalaquett in Boraine & Levy 1995:54)

Reconciliation, according to clause (c), is about the restoring of the human and civil dignity of the victim, as well as their chance to tell their story and receive reparation.[17] Many victims, interviewed by Bronkhorst in South America, agreed that

> ... social, political and psychological rehabilitation was much more important than material compensation. In Chile, for example, there is a huge monument in Santiago Central Cemetery which lists the names of all those who have disappeared or been killed; parks and streets in a number of cities have also been named after the victims.
>
> (Bronkhorst 1995:116)

At a consultation meeting of the members of the Committee on Reparation and Rehabilitation with NGOs, faith communities, and others, it was made clear that the committee only makes recommendations to the President. They dispelled a common perception that there would be great pecuniary (monetary) handouts and material help. State resources are such that there may possibly be some symbolic actions, but not much beyond this.[18] The Interim report of June 1996 of the TRC to the President identified urgent interim needs such as subsistence needs of people who have lost a breadwinner, trauma counselling, medical attention, access to social welfare, access to civil documents, such as death certificates (Truth and Reconciliation Commission 1996:section 4). The final report of the Commission lists their complete recommendations to the President.

Reparation is important for it does acknowledge the victim s dignity (Zalaquett in Boraine et al 1994:13). At the same time, reparations cannot be imposed on victims or cannot just be pecuniary or monetary, for there can be the appearance of trying to

buy forgiveness and reconciliation. Compensation should not only be seen in monetary terms, as experience from other countries shows that victims often feel resentment as to what is perceived as trying to buy their forgiveness (Newham 1995:10). In any case, how does one appropriately calculate and make restitution for physical or emotional suffering, let alone suffering caused through the death of breadwinners or by poor education, for millions of South Africans. Creative means will have to be found to enable reparation, forgiveness and reconciliation.

Fourth objective

The fourth objective is achieved by:

> Compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights.
>
> (SA Act 34/1995, section 3(1)(d))

It is mandated that the final report of the Commission affirm the worth and dignity of those victimised, show the establishing and upholding of the rule of law, and make recommendations for the deterring of future human rights abuses. The truth of the past, as far as can be established, will be recorded. There would be little room for deniability of the past injustices and human rights abuses. There will be the following: acknowledgement of victims, particularly those who died; recommendations for reparations; recommendations about whether to follow or not a certain lustration process, or advice to the president on the future role of identified perpetrators in government or leadership positions. Recommendations will probably be made as regards the legal system. Those granted amnesty will have their names recorded. The accountability of perpetrators will be recorded. There will be recommendations around reparation principles to be followed, the agents of implementation, as well as a time line to be adhered to. Such recommendations will cover areas such as emotional support, medical help, educational assistance, material assistance, community rehabilitation programmes and symbolic reparations. It was the policy of the ANC not to implement a witch-hunt of apartheid perpetrators.

> There could be no summary trials and execution of torturers as there were in the German concentration camps; no Nuremberg trials. There have been no purges, no vindictive lustration laws on the recent Czech model, which

> disqualify certain persons, allegedly from the old order, from holding categories of public or private office — without a semblance of judicial process. There has been no blacklisting of collaborators, as in post-war France and Belgium; nor any dismissals of apartheid social engineers or university academics as in today s unified Germany or yesterday s de-Nazification measures. Such approaches were rejected by South African negotiators and legislators for practical as well as principled reasons.
>
> (Asmal et al 1996:18)

The Act envisages that the Commission will make a contribution to building a human rights culture, through the recommending of certain changes and reforms in government institutions and transformation of structures. It is hoped that the Commission will promote stability and national unity, along with the beginnings of reconciliation. Along with this, it will create legitimacy for the legal institution and the judiciary (Wilson 1995:41). It will help in rooting a national democratic culture more deeply.[19] Moral reconstruction will be shown to have been practised in the very life and functioning of the Commission.

Yet, after noting all of this, the initiatives of the Commission are only part of a larger process of national healing and reconciliation. It is but one mechanism, albeit an important and key one. The Commission begins in a ritual manner the process of national reconciliation. It will close the door to the past, although the reconciling process will continue for many decades. The closure of past horrors and injustice is important, so long as the procedure of closing (the Commission itself) has been comprehensive and effective.

4. AN INITIAL ASSESSMENT OF THE COMMISSION

It became clear in the Commission s first year of operation that the mandate of the Act was too broad and ambitious. The spectrum of the Act s objectives was too great for the resources allowed and the time frame established. Clearly the Commission was severely restricted and limited by the Act itself, and as a result, came under sometimes unfair public criticism.

> Certainly the TRC is in uncharted waters. A fair number of countries have attempted, through commissions of one sort or another, to investigate events and deeds that have taken place in times of political injustice and strife; but none of these commissions has had quite the same terms of

> reference, both for seeking and hearing evidence and for granting amnesty, as our TRC. The TRC has, then, no precise precedents to fall back on: it finds itself engaged in a continuous legal, social and moral experiment.
>
> (Gardner 1997)

In spite of this, and of the opposition to the Commission from many quarters, it can be argued that the positive effects of the Commission outweigh its limitations. We cannot underestimate the tremendous effects of the Commission s work in healing the social psyche of the nation, through its public hearings, taking of statements and its use of the media, particularly radio and television. The very fact of people having the secrets and horrors of the apartheid past paraded in public provided a moment for plural reflexivity and confrontation with our shameful history. For victims it is vindication and affirmation of dignity and personhood, for bystanders it is an opportunity to become involved, and for perpetrators an opportunity for telling truth, change of heart and reparation. It will only be in the years and decades to come that a satisfactory assessment of the Act and the Commission will be possible.

Only a very small portion of human rights abuses and applications for amnesty were brought to the public hearings. Proportionally few statements of victims were recorded (21 000). The possibility of comprehensive investigations is no longer realistically feasible. Public expectations, particularly of victims, will not be met. Victims told their story, but how many found out the truth? For many, the telling of their story did provide a moment of healing, but was this sufficient? Many continue to call for justice to be exercised. Interestingly, though, there was no call for revenge; there was great willingness in many instances to forgive. About perpetrators the same cannot be said (Green-Thompson & O Leary 1998:13). Perpetrators will receive amnesty and walk free, giving the impression that justice has not being done. There will be tremendous controversy and anger over the issue of those who qualify for reparations (that is, those who gave their statements to the Commission), while others who maybe wanted to, but didn t or couldn t, will receive nothing directly in reparation. Meanwhile, government indicated that due to fiscal restraints there would be no comprehensive financial reparations for victims.

Yet, in spite of the danger of high expectations, the process so far does show potential for healing the nation. A linked concern in some circles to the question of amnesty is whether the granting of amnesty will promote a greater level of national lawlessness and violence, as there could be the perception that justice is not adequately exercised, and that criminal acts can be committed with impunity. Yet, it

is to be noted that not all applications for amnesty have been granted. By the end of August 1997, 6 944 applications for amnesty were registered. As of that date, only a small number of applications had been granted (fifty in all), while 1 665 applications for amnesty were refused.[20] It will be important to see, for the sake of justice being seen to be done, whether some key perpetrators, who have not applied for amnesty and who have been identified, are prosecuted in the courts.

The Catholic Bishops Conference of Southern Africa expressed a further concern on the question of amnesty.

> The Catholic Church from the inception of the TRC has been worried about the amnesty provisions. It is a major flaw that perpetrators do not have to ask for forgiveness nor make some form of restitution. At the same time it must be acknowledged that contrition cannot be forced. One is either contrite or one is not.
>
> Justice should not be sacrificed in favour of political expediency. Perhaps the nation could take a step further in the journey towards national unity by creating some form of trust where civil society could show restitution. There are millions of people and thousands of businesses that profited from apartheid. Should they not be willing to show some form of restitution? In this regard, the Catholic Church would be willing to consider supporting what is termed a shame tax which could be used to help survivors and their families.
>
> (Green-Thompson & O Leary 1998:3)

The Commission s publicity and communication efforts are to be lauded, as these were critical in drawing the people of the country into the process of reconciliation. The use of the media to keep the work of the Commission in the news is proving to be a painful, but healing, process. The Catholic bishops indicated a further concern of national apathy and scape-goating in their submission to the TRC.

> When one assesses to date the work of the TRC, it is apparent from the amnesty hearings in particular and to a lesser extent from the human rights hearings, that society has been marginalised to some extent from the process. Civil society can now point a finger at those bad people who committed such awful atrocities, putting the blame squarely on their shoulders and exonerating themselves from any complicity. This presents a major problem before we begin to talk of healing the nation. They and not

> us need healing is the perception. The lack of awareness verging on apathy by the majority of people of this country to what happened in the past will prove to be the greatest obstacle to the attempt to articulate a vibrant and practical process of healing.
>
> (Southern African Catholic Bishops Conference 1997)

Some of the Commission staff continued to work out of the same petty bureaucratic mind as the apartheid regime did, forgetting that they were to serve the citizens of the country. Establishing new structures does not guarantee new approaches to public service. The Commission has also struggled to develop new attitudes appropriate to a human rights and democratic culture.[21]

As the Commission is scheduled to be disbanded in the middle of 1999, it will need to work hard to include as many people as possible, including NGOs and religious faiths — particularly the churches — in the process of reconciliation. Its mandate will only succeed insofar as it has motivated and been inclusive of others in its work, as well as in the ongoing process of national reconciliation.

The five volume *Truth and Reconciliation Commission of South Africa Report* (Truth and Reconciliation Commission 1998b) and recommendations to the president and parliament place the final responsibility with government to ensure that the process which it started will continue to have the support of the same political will which initiated the national reconciliation and the TRC. The success of the TRC must not only be evaluated by its own work, but also by the reception and adoption of its proposals by government. As the project of government, it must be government who in the end must take responsibility for the success or failure of the Commission.

The Report captures generally one acceptable and credible history of South Africa, even though it was severely criticised and opposed by political parties. In fact, this might be seen as a positive sign of the success of the work done. Generally civil society, the NGOs and the faith communities favourably received the report. In spite of its length (2 500 pages) the Report only paints a very general picture and lacks in detail, particularly at the local level. It also, being the result of the work of a number of committees and researchers, overlaps in content. Of course this might be another sign of credibility of the Commission.

Ritual expression at key moments and in the daily hearings of the Commission occurred and were good models to be emulated, but these ritual moments often

were, probably unavoidably, far from the nation at large. The Commission could have given greater attention to this dimension of public ritual and use of symbol. It is an impetus for the nation to pursue the ritual dimension of reconciliation.

A danger for the Commission was that it portrayed itself too much as a Christian initiative. This occurred at the beginning of the human rights abuses hearings with the sometimes inappropriate comments of a Christian nature by some of the commissioners. The Commission s brief was to be inclusive and respectful of all who appear in its hearings, no matter their personal, religious or political beliefs.

Lastly, the issues of prosecution, amnesty and reparations have been thorns in the flesh for the Commission s workings. It is to be remembered that the Commission itself did not write the Act and its conditions, and is dependent on government s decisions. The Act itself was a result of political compromise and bargaining. It would be unfair to attribute blame to the Commission for the limits of the Act. At the same time the Commission can recommend amendments to the Act.

Given the fact that ... the concepts of truth and reconciliation are ideals which cannot be objectively measured (Newham 1995:9), the Commission will have to be judged on its achieving the four objectives listed by the Act, as well as on its proposals to the President. Once again, though, it is not contingent on the Commission whether these proposals are accepted and implemented, but this responsibility rests with the President and government.

5. SOME PRELIMINARY CONCLUSIONS

Reconciliation in South Africa would include ensuring the honour and dignity of victims through establishing a common memory of the past. There would be a recognition and respect for human rights and allowance for structures to be established so that the human rights abuses of the past will never be repeated.

Victims need to be acknowledged, particularly those who stood for justice and what was right. The suffering and alienation of the past needs to be reversed through reparation and repairing the past. This is done through establishing a solid rule of law, economic and political justice, along with the addressing of bread and water issues, such as employment, housing, health and social services and education. It could be argued that the heart of reconciliation in South Africa is not impressive words or concepts, but such concrete national actions.

Greater respect and recognition of cultural and religious traditions, along with people s history, has to be addressed in order for there to be meaningful reconciliation. The building of a moral order will be required for a stable future. Justice and prudence will have to be harmonised as the past is faced, so that there is a future of peace which can be embraced.

In order that there be the possibility of lasting reconciliation, perpetrators will have to admit guilt and make amends, express remorse and manifest collective contrition. Responsibility and accountability for past actions are to be addressed.

Healing of memories, dealing with the trauma and sickness of the past, remembering the dead, dealing with the hard question of forgiveness and developing new democratic attitudes and respect for human rights, are all issues that are on the agenda of social reconciliation. Women and children demand special attention, for they are often the ones who suffer the most and whose voices are least heard.

Clearly the above conclusions speak of the ideal, but they are stars by which South Africa needs to chart its course. Anything less would be a betrayal and insult to the many who laid down their lives for the dignity and justice of all South Africans. The night is over and the dawn is just beginning.

The South African experience presents a challenge, not only for South Africans themselves, but also for other nations on earth to journey down their road of reconciliation as well. Could it be that the survival of humanity rests on our attention and action towards reconciliation?

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NOTES

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2 Argentina s National Commission of the Disappeared has been described as the most successful commission in the last decade. The report of the commission was published (entitled *Nunca m s* — Never again) and became a national best seller. It documented the disappearance of over 9 000 people. The wide publicity surrounding Argentina s truth commission, including the wide distribution of the commission s final report, the televising of testimony given before the commission and regular press briefings by the commission, functioned as a kind of social catharsis, bringing an end to a long-silenced history of past abuses. This was unlike Zimbabwe where, in the 1985 Commission of Enquiry, the final report was submitted to

the president and was never published or made public. Thousands of civilians who were killed in the war of independence are unnamed and unacknowledged, and perpetrators not held accountable (Truth and Reconciliation Commission 1993:4).

3 The term is derived from the Latin *lustrare*, to purify by fire, or to make things clear by bringing them to light.

4 See the very strong criticism given by the Human Rights Commission (1993).

5 The limits of this article do not allow for a discussion on the philosophical foundations of truth. What needs to be noted, however, is that there are different views on the matter of truth. Helpful to this discussion would be viewing truth from different perspectives, such as the legal, ethical, historical, personal and religious. See the discussion of Bronkhorst on truth (1995:145-146). See also Braude 1996. She seeks, borrowing the terms of the historian Raul Hilberg, to see the differences of the truth for victims, bystanders and perpetrators. Antjie Krog raises some theoretical and philosophical questions about truth in Boraine & Levy 1995:116-117.

6 Interview with Ela Gandhi, Durban, 23 July 1996. She is a granddaughter of Mahatma Gandhi, a member of Parliament and was a member of the Justice Portfolio Committee which developed the bill. I am grateful to her for providing the background to the development of the bill and its major points. She notes that the bill was strongly influenced by the compromises made during the negotiations which happened at Kempton Park, particularly around the issue of amnesty.

7 Promotion of National Unity and Reconciliation Act, No. 34 of 1995 (19 July 1995), as amended by Promotion of National Unity and Reconciliation Amendment Act, No. 87 of 1995.

8 The TRC proposed the cut-off date to be moved up to the inauguration of the state president on 10 May 1994. President Mandela was not in favour of changing the date, as he considered that it would send the wrong message to a country already riddled with lawlessness and crime. See SAPA, Mandela rejects extended amnesty cut-off date, Pretoria, 22 October 1996; SAPA, Cabinet to discuss extending amnesty cut-off, Cape Town, 25 October 1996. Mandela finally acceded to the request to extend the date.

9 National Unity and Reconciliation Act

10 Gross violation of human rights as defined by the Act (SA Act 34/1995), means the violation of human rights through —

(a) the killing, abduction, torture, or severe ill-treatment of any person; or

(b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), and

which emanates from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was advised planned, directed, commanded or ordered, by any person acting with a political motive (SA Act 34/1995:section 1).

11 Jos Zalaquett is a Chilean lawyer and activist and was a member of the Chilean National Commission for Truth and Reconciliation. He is a member of the International Commission of Jurists, and served for ten years on the governing board of Amnesty International (See Boraine et al 1994:158).

12 An amnesty is the act of grace or forgetting [sic], according to the dictionary. More precisely, in judicial terminology it is often used to distinguish between an amnesty and a pardon. The first is intended to obliterate all legal memory of the offence, while the pardon only relieves from punishment. Practice differs: pardons have been used to foreclose prosecutions, and amnesties have covered persons who were already serving prison terms . Amnesty International s position on pardons and amnesties is that impunity negates the values of truth and justice and leads to the occurrence of further violations (Bronkhorst 1995:100).

13 SAPA, Closing the door on SA s dark past, 11 May 1996.

14 I am grateful to Dr K. Mgojo, Truth Commissioner, for this insight.

15 Victims as defined by the Act (SA Act 34/1995), includes —

(a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights —

(i) as a result of a gross violation of human rights; or

(ii) as a result of an act associated with a political objective for which amnesty has been granted;

(b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such persons intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimisation of such persons; and

(c) such relatives or dependants of victims as may be prescribed.

16 Letter to President Mandela from Amnesty International.

17 According to the Act (SA Act 34/1995) Reparation includes any form of compensation, ex gratia payment, restitution, rehabilitation or recognition.

18 Notes taken by the author at Natalia, Pietermaritzburg, 11 July 1996.

19 Admittedly, this would be controversial. What is intended here is not western liberal democracy, but a democracy appropriate to South Africa, and the African context. See Maluleke 1994:254.

20 Statement by Dr. Alex Boraine, Acting Chairperson, TRC, 22 August 1997.

21 This challenge — to act with impartiality and not to be a lackey or puppet of the African National Congress — comes particularly from the Nationalist Party, other right-wing parties and organisations, and the Inkatha Freedom Party. So far, however, the Commission has shown great impartiality and regard for human rights irrespective of party politics.

Southern Africa in water crisis – A case study of the Pangara River water shortage, 1987–1996: Towards a resource-based conflict management and resolution perspective[1]

Martin Revai Rupiya[2]

ABSTRACT

This paper is organised in three parts. The first is an assessment of the nature of the environmental and regional weather patterns leading to predictable water shortages. This is followed by the case study of the Pangara River community. Analysed at the micro-level, as the community tried to grapple with the gradual onset of lack of water, it is hoped that the principles brought out can be anticipated at the regional level. The final part briefly draws on the earlier discussion putting forward suggestions and recommendations for the establishment of a regional mechanism for managing the water system.

1. PREAMBLE

The collapse of the bipolar world during 1991 and the removal of apartheid in South Africa by 1994 have overshadowed the recognition of new security issues until these erupt into open warfare. There is a wide gap between the levels of water available to citizens of different countries. The disparity in accessing water that stems from the different states ability in harvesting, conserving and distributing water, is a situation likely to become a future source of conflict in the region. A single example is illustrative. Of the estimated regional annual average of 152 cubic meters (cu. m.) of water needed by each of the 145 million inhabitants in Southern Africa, South Africans and Mauritians use 410 cu. m. each while Malawians take up a low 20 cu. m. per individual. What this means is that there is a tiny population in the latter country supplied with readily available water leaving the rest fending for themselves. Existing water based management systems depend very much on the mode and period of rainfall delivery. In Southern Africa the rainfall season is restricted to the months of November to March except for parts of the Cape, South Tanzania and Northern Mozambique. During these few months water supply for the following two thirds of the year is delivered. While the timing of the rainfall has become critical, wild gyrations in the rainfall pattern which register differences in each year of as much as 30% have been noted, making cropping predictions unreliable (Chenje & Johnson 1996:27). Consequently, management systems to harvest, store and evenly distribute the water throughout the dry period covering two thirds of the year are critical to the survival of states in the region. Some states in Southern Africa have partly achieved this position as a result of decades of technological and resource investment in water conservation, purification and distribution systems. Water availability is also affected by *predictable changes in the environment*, to overcome which states have been forced to adopt counter-measures.

Secondly, there is the question of the historical *fait accompli* where states are sometimes faced with a river that has already been fully exploited. As discussed below, for instance, the Orange and Save Rivers have been fully exploited by South Africa and Zimbabwe, respectively. This has left no room for any subsequent initiatives to access water from these two rivers by emerging neighbouring states. Third, the region is experiencing marked population increase leading to rising urban drift. In most countries, the rural to urban drift averages 11% per annum coupled with a population growth rate of between 3% and 4%. This has effectively outstripped economic growth rates. Worse, Tanzania and Mozambique are states occupying pole positions amongst the world s poorest. Thus any growth experienced during the next decade will not be able to produce enough surplus to invest in water

infrastructure. In order to cope with the urban population, states have embarked on development strategies that are dependent on the availability of water without which these cannot be realised. The context in which all the above is taking place is an environment that has no regional water management institution. Individual and uncoordinated action by the region s countries is likely to erupt into war over water. Failure to appreciate this and take anticipatory action, in the absence of a conflict management mechanism,[3] heralds a source of future conflict based on access to an essential resource — water.

2. THE CONTEXT OF WATER AS A NEW SECURITY ISSUE

What has the end of the global standoff and abandonment of apartheid meant in the context of water use in Southern Africa?

The availability of water underpins survival and development. In Southern Africa, at least four elements determine the success or failure of newly independent states ability to provide water to their nationals. These are the environmental and rainfall patterns, population increase and pressure, development strategies, and the head start already made by some states in exploiting existing potential. Each of these will be briefly discussed to reflect the extent of their contribution towards facilitating or retarding access to water.

Environment and rainfall patterns

Southern Africa is a drought prone region in which predictable shortages of water have to be overcome through contingency plans. Sadly, this fact has not been widely acknowledged. Based on the first reliable records of 1888, later confirmed in 1908, an eighteen year cycle of wet and dry years hang over the region (Chenje & Johnson 1996:31). Global warming experienced in the intervening period has since been exacerbated by the effects of the dry cycles dating from 1860 to the present. Taking the last thirty years or so, the University of East Anglia Climatic Research Unit has documented a significant 0,43…C increase in warmth occurring between 1961 and 1990 (*Guardian Mail* 1998:11). In their findings, the ten warmest years since the unit s record began were from 1983 when temperatures averaged 14,58…C (58,2…F) compared to 14,0…C (57,2…F) between 1961 and 1990 (*Guardian Mail* 1998:11). The warm temperatures result in increased evaporation affecting levels of harvested water in storage. Kariba loses a quarter of its holdings through evaporation every year and given the increase above, this loss level will also

increase. In other words, the quantities contained in reservoirs and dams will have a greater portion evaporating than would have been previously forecast. As if to bear out the veracity of the scientific discovery, the intervening period has been interspersed and characterised by droughts and shortages of water.[4] The years 1935,[5] 1946-47, 1965-66, 1972-73, 1982-83, 1986-88, 1991-92 and 1994-95 have witnessed particularly impoverishing shortages of water (Chenje & Johnson 1996:33). The lack of water has been defined as follows:

> Drought is a condition of abnormal dry weather resulting in a serious hydrological imbalance, with consequences such as losses of standing crops and shortage of water needed by people, livestock and wildlife.
>
> (Chenje & Johnson 1996:31)

The droughts of 1991-92 and 1994-95 for instance dramatically reduced the economic production and quality of life of most Swazi whose wealth is tied up in cattle. Over 55 000 head of cattle were lost and most households were pauperised (Chenje & Johnson 1996:32). For the countries that are landlocked, the existing fishing industries, and tourist attractions such as those at the Victoria Falls, Kafue, Kariba and Cahora Bassa, assume an added significance with the onset of drought. Complete livelihoods including employment and survival are at stake. Droughts experienced on the continent, such as those of 1992 and 1995, forced Zimbabwe to appeal for aid to feed 5,157 million people. The effects of such droughts are not only life-threatening but also economically dislocating, and an urgent response is therefore always required. This is what makes the shortage of water transcend its seemingly mundane confines into the dimension of conflict about human survival and economic security.

Even during periods of good rainfall — limited to the period between late November and early March in each year, the distribution of water is uneven. The rest of the year is a dry period with only surface water readily available in wells until about August in most regions. Only the three regions of the Western Cape, Northern Mozambique and the area east of Lake Malawi stretching into southern Tanzania receive more than adequate water supplies mostly spread over two rainy seasons. The rest expect 60% of their rainfall to arrive during the three wettest months of December, January and February. As one moves to the central areas of Botswana, parts of South Africa, western Zambia and south and western Zimbabwe as well as southern Malawi, this confined rainfall rises to as much as 80% of the total (Chenje & Johnson 1996:34). This therefore means that for most of southern Africa, states must establish dams and other water holding mechanisms to ensure regular

availability throughout the rest of the eight dry months on average. The result has been increased reliance on ground and dammed water, harvested from fast flows during the short rainy season. Finally, certain dams have started drying up. Lakes Xau, Liambezi and Ngami in Botswana have (since 1982) become dry dust bowls (Chenje & Johnson 1996:20).

Although limited ground water levels are available, these are prohibitively expensive to harness according to the United Nations (UN) Ground Water Survey undertaken in East, Central and Southern Africa in 1989 (Chenje & Johnson 1996:40-41). This survey established that at most, trapped water in the rock cracks, caves and channels is at depths of 800 m. The alternative has been the aquifers where water quantities being exploited are supplying nearly 80% of the region s requirements. Aquifer depths vary from 30 to 100 m., the deepest being in the Kgalagadi desert at 600 m. Extensive and uncoordinated regional exploitation of aquifers has the added threat of unsettling rock formations with all the implications for the populations on the surface.

Population increase and pressure

Political independence in Southern Africa during the last two decades has led to the release of the hitherto captive population comprised of internally displaced peoples inside countries at war and those who went into exile in neighbouring states or elsewhere. Population concentration centres — such as Protected Villages, Concentrated Compounds, Independent Homelands , Reserves, Refugee Camps, Military Training Camps, Civilian Holding Camps — under control of the African National Congress (ANC), Pan African Congress (PAC), Front for the Liberation of Mozambique (FRELIMO), Mozambique National Resistance Movement (RENAMO), South West African People s Organisation (SWAPO), Zimbabwe African Peoples Union (ZAPU), Zimbabwe African National Union (ZANU), Union for the Total Independence of Angola (UNITA), the Movement for the People s Liberation of Angola (MPLA), Malawian exiles and other organisations, have in the last two decades released millions of people into the mainstream regional economy. Host nations of mainly African liberation movements including Lesotho, Swaziland, Botswana, Tanzania and Zambia have also finally found an opportunity to direct their attention toward development away from the protracted wars except in Angola, the Democratic Republic of Congo and Lesotho. On attaining freedom, many proceeded to the towns and urban areas seeking jobs, security and improved lifestyles, forcing local government administrations to provide readily available water. An 11% rural to urban drift per annum, coupled with a

population growth rate of 3%, has effectively outstripped national economic growth rates. In the various camps, however, most endured severe deprivation. It was since they were living in barrack room type of accommodation generally supplied with a single tap or portable water bowsers that consumption levels were held at artificially low levels. Of 142 million people in Southern Africa by 1995, over half were so affected (Chenje & Johnson 1996:10). The situation has not been helped by the location of the acknowledged UN worlds poorest states , Mozambique and Tanzania, in Southern Africa.

However, an even more ominous prediction is the likelihood of the region s population set to reach over 280 million in the next twenty-five years. The available resources, of which water is the most important, are static and are unlikely to cope against such a phenomenal increase.

Development Strategies

The second phenomenon lies in the development adopted by the new and emerging states seeking to catch up with the rest and bring about a stable, economically integrated and prosperous zone. For the sake of the millions coming into the urban areas, the new majority governments have set themselves the task of providing the basic infrastructure to encourage development.

Zimbabwe s example is typical. A three-phased developmental strategy has been identified: providing water firstly to urban areas, secondly to peri-urban areas (including mining centres, small towns, townships and irrigation schemes), and finally, to rural or communal areas.

Within the urban areas, 91 400 low cost housing units were planned to be built over three years (Chenje & Johnson 1996:110). This was expected to house the rapid influx into the cities and eliminate the mushrooming squatter camps. Two decades later this goal has remained elusive. Meanwhile, urban unplanned settlement has continued. In a similar development, in 1994, the ruling ANC announced that it would provide each household with between 20 to 30 litres of water within 200 m. every day (Chenje & Johnson 1996:9). The reality so far has been anything but the achievement of these ideals.

The next developmental focus was on the agro-based strategy, which emphasises reliance on irrigation schemes as the route to relieve impoverishment in the rural areas. The irrigation schemes, once infrastructure was established, were capable of

giving birth to other spin-offs such as commercial fisheries, small-scale enterprises and ginning mills. Taking the researched Zimbabwean example, this showed that the Tilcor Irrigation Estates on the Sabi-Limpopo provided agricultural employment and stimulated industrial and commercial development . The Chisumbanje Irrigation Scheme employed 4 000 agro-workers as well as an additional 1 000 in milling and grinding sugar. Their remuneration averaged Z$500 per year which was way beyond the subsistence return . The irrigation scheme raised the income levels of farmers and created employment at the rate of a single job per 1,2 hectares of irrigated land. Similar experiences were noted at the Hippo Valley and Triangle Sugar Irrigation schemes (Zimbabwe Conference on Reconstruction and Development 1981:68, par. 3,5). The related benefits of mining centres and small towns served to consolidate development ushered in by the irrigation schemes.

Finally, attention was focused on the rural areas, previously untouched by imperial and colonial development. In 1980 Zimbabwe announced that 700 000 family units, representing nearly 70% of its population, resided in the rural areas. These were spread amongst 174 (then) Tribal Trusts areas and would have had dams built around them. At least one dam for each of the 55 Districts in which the Tribal Trusts areas were located was planned to be established within the next two decades (Zimbabwe Conference on Reconstruction and Development 1981:68, par. 5).[6]

The three-pronged development strategy adopted by Zimbabwe in 1980 can be extrapolated on a wider regional canvass. These ambitious programmes — of providing water to the previously disadvantaged urban arrivals in an environment where the dreaded restrictive pass system has been abolished, of establishing irrigation schemes and of constructing dams — reflect the type of aspirations of the new political entrants. Clearly, implementing policies oriented towards the majority of the people and designed to raise standards of living is dependent on the availability of water. Activities taking place around the Victoria Falls, Kariba, Cahora Bassa and Kafue are illustrative. Tourism and internal recreation facilities, fisheries[7] and electrical power generation provide the engine for economic development and growth in these outlying regions, as well as in the country and region as a whole.

The quantities of water required, as determined by new majority rule governments, are staggering but unsustainable. In Namibia, following the installation of the SWAPO government in 1990, the trend revealed that consumption between 1970 and 1993 had hovered at 37 cu. m. per person per year. In the final years, this rose sharply to 95 cu. m., reflecting a 4,2% increase per annum, which is unsustainable in the long run (Chenje & Johnson 1996:6). Namibia, one of the three Southern

African Development Community (SADC) states after South Africa and Zambia, has over 51,3% of its population urbanised and abstracts over 40% of its water from underground sources (Chenje & Johnson 1996:40-41).[8] Furthermore, based on the broad considerations addressed in this paper, a looming water shortage has been predicted for Namibia, South Africa and Botswana to occur by the year 2030.

What is the state of access and sharing of water in Southern Africa?

Eleven states share national boundaries demarcated by the major river basins in which some of the countries have already established extensive water storing dams presenting a *fait accompli* to any newly independent state wishing to provide for its previously disadvantaged peoples. A historical overview of the Southern African region reveals that some states have greater survival ability than others, resulting from technical management of water established over the last three generations.

The regional rivers include the Zaire, the Zambezi (on which 30 dams have been constructed) (Chenje & Johnson 1996:38-39), the Limpopo (with 43 dams shared between South Africa and Zimbabwe), the Okavango, the Orange River (with 29 dams, 24 of which are in South Africa), the Inkomati (on which 10 dams shared between Swaziland, South Africa and Mozambique have been constructed), the Ruvuma, the Cunene, and the Save (which has been fully exploited from 20 dams all of which are in Zimbabwe effectively leaving little flow into neighbouring Mozambique) (Chenje & Johnson 1996:xv). The Lesotho Highlands Water Project (LHWP) is saddled with six dams from which the country exports water to the South African Gauteng Province. This brief inventory reflects the state of access on major rivers and how water has already been shared in Southern Africa.

Southern Africa s objective conditions in the area of accessing water

As a result of appreciating the shortages in the availability of water, over the period, some states have taken contingency measures. Not only has South Africa established the largest irrigation scheme in the region, the 52 000 ha. Vaalhartz Irrigation Scheme, but between 1880 and 1980 she constructed 410 large dams (Chenje & Johnson 1996:102). As a result of decades of improved water management policies, uninterrupted by wars,

> South Africa uses a high 51% of its available water for irrigation, 15,5% for nature conservation, 12% for mining and domestic consumption, with Industry and Forestry each consuming just over 7%, manufacturing 2,7%

> and hydro electrical generation another 2,3% with 1,5% remaining as stock.
> (Chenje & Johnson 1996:14)

In Southern Africa, the estimated average quantity of water that should be available to an individual is 152 cu. m. per year. Consumption levels reveal wide disparities, however. The affluent South Africans and Mauritians use 410 cu. m. per individual, while Malawians survive on the lowest average of 20 cu. m. per individual (Chenje & Johnson 1996:2).[9] Because of its ability to have fully exploited most of the local geographical potential amidst continuing increasing demand for water, South Africa has now embarked upon external sources of supply. For the parched and heavily populated Gauteng Province, its water needs have been met by importing the commodity from Lesotho.[10] The LHWP is the single most important resource base and national asset for Lesotho and has made the country self-sufficient in electrical power while boosting the economy from royalties.[11] This is expected, over thirty years, to deliver water of good quality into the Vaal River System that then supplies the commercial, residential and farming requirements of the Gauteng Province. Following the successful implementation of the LHWP, the country has also expressed interest in accessing water from the Zambezi through Botswana. As an incentive the latter has been promised taps placed at intervals along the pipeline as it carries water from the Zambezi to South Africa. Zimbabwe is also eyeing the Zambezi waters, to be directed towards Matebeleland and even the Masvingo central Zimbabwean provinces. This is an area of possible friction in future that needs careful thought.

Zimbabwe and South Africa between them have monopolised the Limpopo River system, denying Mozambique and even Swaziland further opportunities in the future. Zimbabwe has also exploited the Save River system to such an extent that it leaves Mozambique with a water shortage (ACCORD 1998:15). This has been exacerbated by poor soil conservation practices that have silted up the river flow as it enters neighbouring Mozambique. This has limited the full potential that could have been realised from this river by both countries.

Against this background, most states are harbouring aspirations to develop major areas by providing water, but lack both the resources and technical capacity to put these into effect. Botswana, South Africa, Zimbabwe and to a certain extent Namibia have within their borders bore-holing and dam constructing capacity. For the rest, outside companies have to be engaged at international tendering market rates that are expensive.[12] The result is to almost emasculate states ability to survive, develop and prosper.

Conclusions

The combined effect of predictable rainfall shortages, population increase, the need to embark on development initiatives and the situation of co-existing with already developed states attracting skilled immigrants from throughout the region is to emphasise the need of intervention where water is concerned. However, available evidence shows that some states can take pre-emptive action while others lack the technical and material resources to do it.

The dynamics of the distribution of water are to a greater extent influenced by transitory factors of economic development than by the engineering and technological awareness of previous generations. Put differently, some of the states enjoy what is now an inherent advantage over newer polities.

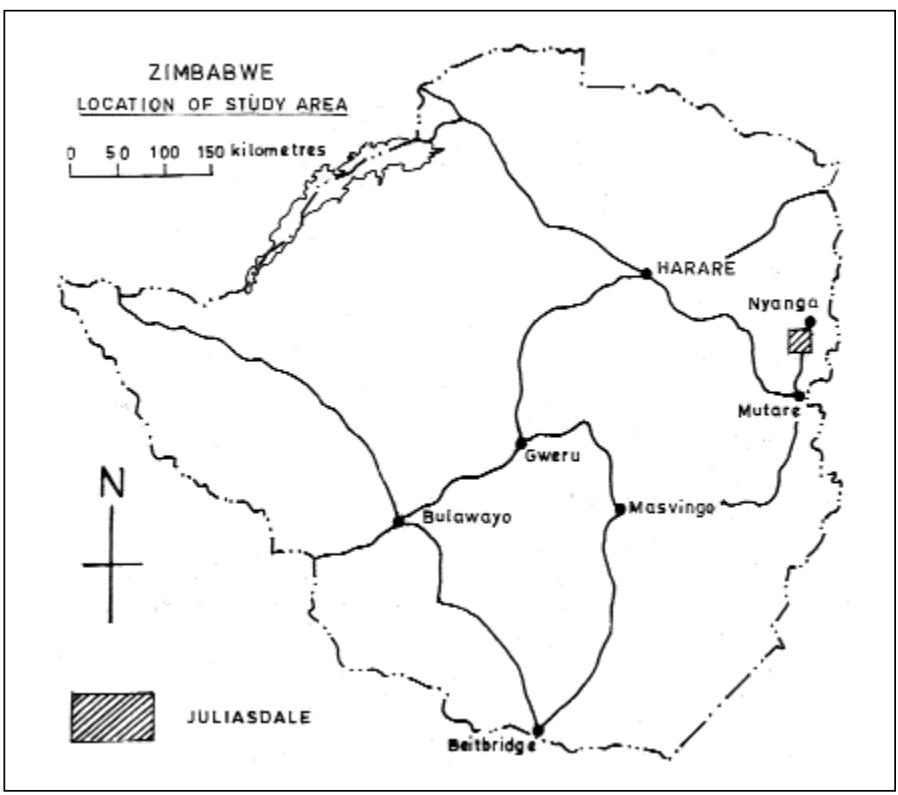
Existing water system management mechanisms

According to Chenje & Johnson (1996:151), the earliest mechanism attempting to co-ordinate Southern Africa s eleven states whose national boundaries share access to water, dates back to 1948 when the Southern African Regional Commission for the Conservation of Utilisation of the Soil (SARCCUS) was established. However, in the same year, the Afrikaner National Party swept the polls in the South African elections. Soon afterwards, the National Party introduced political programmes inimical to the integration not only of their country alone but the region as well. Since this early period, apartheid has contributed towards the economic, social and military divisions still existing in the region in which access to water is the most entrenched. Following the South African April 1994 elections, which ushered in the majority government of the African National Congress (ANC) within a transitional arrangement, SADC Protocol 1995 on Shared Watercourse Systems has been signed. This is expected to assist with the Water Management System of the region but judging from its inactivity, the institution has not been accorded enough political and legal support or autonomy to make a difference. While the concept put forward in the case study of River Boards, duly constituted by local key stake holders who are answerable to the Minister who then co-ordinates national development, is the way to go, this procedure is not standard practice in most states in the region. Angola and the Democratic Republic of the Congo, for example, are still to inculcate town and country planning methods when the military and political conflicts presently tearing those countries apart are settled. What is required then is to raise awareness of water as a security issue to the level that state policy makers take cognisance and begin to factor this into their general development plans. A necessary part

of this would be the parcelling out of tasks related to water to a regional planning agency. From its pedestal position, this body is equipped to better understand the intricacies of regional cohesion and respond accordingly. But such an institution needs to be agreed upon. This study therefore forms one of the small information resource bases providing building blocks towards the realisation of the regional response.

3. THE RESOLUTION OF WATER-BASED CONFLICT: THE PANGARA RIVER-NYANGA[13] CASE STUDY, 1987-1996

The Pangara River starts from the hill past the road to Nyanga and runs through eighteen plots ranging from 10 to over 15 acres. Owners use the properties as residential homes. This is within a commercial farming area, which runs downhill and



JULIASDALE (see note 13)

ends some 8 km. below in the Communal Area. The youthful and fast flowing river with a width of not more than 50 m. at the widest point, drops at a steep gradient averaging 1:7 through several kilometres before reaching flat land. The river flows strongly between December and April each year.[14] As a consequence of the topography, the water level in the river is uneven and except for pools around tight bends the rest is a fairly shallow central river line. Those living on the slopes along the river are therefore forced to resort to capturing the fast flowing water during the short period of flow by establishing weirs, dams, wells or bore-holes. Since the water table is erratic, those sinking bore-holes or wells find it difficult to strike water the first or even the second time.

While all the residents accessed water from the Pangara River — and most needed nothing more than the general Primary Rights allocations — a few with business interests applied for and received Secondary Rights. To access the water, especially during the dry months, a number of residents had installed hydrams. These water driven pumps extracted only a small amount of 2 litres per second (l/s) while allowing 45 l/s to pass as overflow. The combined applications of those with hydrams showed that a total of 93,86 l/s were drawn as Water Rights from the Pangara and its tributaries. There was however, a qualification to the Water Rights: abstraction could only be effected after Primary Rights of human, livestock, fish and other water dependent plant life had been satisfied. A contradiction existed where, for instance, Secondary Rights had been authorised for the establishment of a piggery, but where the animals being reared had to assume Primary Rights almost the moment they were placed into the pens. If they were denied nourishment, their condition would become life threatening, their destruction would result in financial bankruptcy of plot holders and the general commercial derailment of ongoing operations would follow.

Over time, however, small-scale farming and commercial agriculture expanded. Beef and pork production, fresh water fishing, fruit and vegetable farming and protea growing (for exporting the flowers) became established. This resulted in plot holders, who were now small-scale entrepreneurs, beginning to employ workers. While some of the workers came in for the day from the neighbouring farms or adjacent Communal Area, others lived permanently on the plots. This resulted in a dramatic human population increase with an immediate impact on water consumption. This was further exacerbated by *water levels required for the upkeep* of cattle (for beef and milk), pigs, orchards, vegetable gardens and export flower gardens. These certainly needed more than the rural 20-30 l/s per day or even the urban 500 l/s standard daily requirements.

The first signs of reduced water flow (in retrospect) occurred during the erratic rains and drought of 1987. Quietly, each of the water abstractors found means to address what was then perceived as a minor shortage. Some constructed weirs while others established small dams to boost available quantities. In order to siphon more than the hydram rate of 2 l/s and to ensure business survival, others invested in diesel and electric pumps. These could abstract quantities required within hours if not minutes during the rainy season. In order to cater for the dry months after April, many sunk bore-holes or wells. Sinking a bore-hole is at the best of times a risky undertaking, based on probabilities and predictions about the likely flow of water. Bore-hole construction companies have, as standard practice, fail-safe conditions according to which, in the event that they do not strike water, the risk is borne by the customer. Sinking a bore-hole on the steep Pangara slopes, became, more than anywhere else, a hit or miss affair. With most residents unable to afford the costs, the majority was forced to borrow from the banks. In such an event, a failure could result in long-term indebtedness with little prospect of having alleviated the situation of the water shortage. The responsibility of providing expensive infrastructure as an individual had become a very heavy burden. In the end, only the wealthy could indulge. The net effect was to polarise the community into haves and have-nots .

In sinking bore-holes, residents had to apply for increased water rights and not a single applicant from Pangara had such an application turned down. The almost wholesale granting of water rights was in excess of what the river could sufficiently provide. In retrospect, evidence showed that the Ministry of Water and Development through its Mutare office did not thoroughly investigate the submissions and by allowing increased abstraction, worsened the already desperate situation. Those with additional water rights and located upstream where they could now legally install and run powerful diesel or electric pumping engines affected the residual flow of water supposed to be allowed to supply those below.

All the above mentioned efforts could only have a limited effect as long as the drought conditions prevailed. The 1990, 1992 and 1995 droughts gripped the country and the region. The impact on the Pangara River community varied. While some of the people lived on the plots, others used these as weekend and holiday resorts, commuting from Harare, the capital. This latter group could easily leave the problem on a Monday or even not come out when they telephoned their property managers and were informed about the continued lack of water. They would concern themselves with worrying about the sustenance of their staff and animals . In other words, they could afford to take a detached view of the crisis. As the crisis evolved, these people were soon referred to as *absentee landlords* .

Those who resided in the area, however, were in the majority and were severely affected by the water crisis. This forced them to resort to fetching and carrying water from outlying regions for basic requirements. This included driving to the nearest gushing bore-hole if they were in good books with its owner, or to the nearest towns of Nyanga or Rusape, at a round trip distance of some 80 kilometres. In the process, many of them met and discussed their predicament.

Already factions began to coalesce around the more vocal characters in the community on both sides. A third faction also emerged, cutting across the Absentee Landlords and the Full-Time Residents. This was the more neutral, non-aligned group, who were prepared to try and further understand the nature of the problem and were wishing for an all-embracing solution. These people, however, were prone to be pressured to support certain factions at given times. The most affected people were naturally at the lower part of the Pangara River as the hyperactive pumping engines upstream ensured that little or no flow continued. Many of the severely affected gravitated towards the Action Now vigilante committee. Several options aimed at addressing the water shortage were then considered.

Strategies for survival: local efforts to ease the problem of water shortage

Quite rightly, others began to question the validity of individual water rights and whether or not some of the plot holders were accessing more water than their licenses authorised. On finding evidence of fiddling , many sought to challenge these practices by taking each other to the Administrative Water Court. Court decisions which upheld existing water rights or tried to qualify quantities to be abstracted did not take into account the objective conditions of the onset of drought and related settlement factors as discussed earlier. Consequently, court verdicts failed to provide a lasting solution. This route appeared to have been exercised by the more affluent members of the community. However, this only served to poison already strained personal relations.

Later, each of the factions contacted the office of the Ministry of Water and Development, and requested officials to come out and enforce approved water rights where these were being openly flouted. In a classical case of African conditions, officials indicated their willingness to come out, but their inability due to lack of transport. At different times each of the factions then provided transport or bus fares to the officials. When they arrived, however, the officials would be monopolised by the faction who had brought them out. The other faction, having been downplayed in such a way, would simply wait several weeks before they also brought out an

official — sometimes the same one who had come before — and have their own point of view prioritised. Here, fault has to be apportioned to the government officials. Their involvement was indecisive. They were given to aligning with whichever faction was in their office, and when on the ground, they appeared to say what each of the sponsoring factions wanted to hear. This further complicated the situation. What is clear, is that the underlying deteriorating situation was not appreciated by the officials, who also were of a lower calibre than some of the people engaged in the struggle. These were lawyers, successful industrialists, factory owners, medical doctors and others mostly from middle management and higher working backgrounds.

Secondly, the Full-Time Residents group, who had constituted themselves into a vigilante Action Now group, managed to attract some of the people with a natural tendency towards neutrality. These neutrals were held prisoner by the extremism of the natural leaders of the activists. Plot holders mobilised their workers and started marching up and down the stream and enforcing the law , as they understood it. This involved invading private property, destroying raised dam levels , and demolishing illegal catchment areas constructed to facilitate the sucking pipes of diesel or electric pumps. The result was that the trapped water seeped through the parched riverbed and soon dried up before reaching the plots below. For those engaged in fish farming lack of water spelt the immediate closing down of operations. In the event, neither the illegal owners nor the vigilantes benefited.

Upon learning of this intrusion, many of the absentee landlords contacted the police, who were thus brought into the crisis. No arrests were made, but warnings were issued. However, the invaded property owners also responded in kind. Armed with duly registered weapons, they reconstructed their contraptions under armed guard. The stakes were set for open warfare over water. The water shortage problem, which was clearly not of anyone s own making, was viewed subjectively by those involved. On seeing the immediate impact of a neighbour s newly installed diesel pump or illegally expanded weir or raised dam wall, they felt these actions were the cause of their discomfort.

Here was a classical case for intervention by those engaged in conflict management and resolution.

Exploring the possibility of a solution

The above process had been going on for two years before the Centre for Defence

Studies (CDS) at the University of Zimbabwe, following a chance meeting with one of the neutrals , was invited to try and provide a solution to the unending crisis.

The methodology was firstly to undertake library research in order to understand problems related to accessing water and the legal requirements surrounding this issue. This revealed that everyone could exercise Primary Rights for basic requirements and apply for Secondary Rights for small scale or entrepreneurial purposes (Water Act of Zimbabwe 1996:594-595). This also defined the amount of water authorised to be abstracted without prejudicing those downstream. A list from the Ministry showed that most of the people concerned had complied with the requirements, but that the granting of water rights had exceeded the capacity of the small river. It also became clear that officials were aware of some of the illegal contraptions built to increase individual plot holder water holdings, but that they had come across this reaction elsewhere across the country and chose to ignore this because of the harsh drought conditions, unless they were forced to intervene. The result was therefore a reluctant official response to what was perceived as life threatening by those making the reports.

This was then followed by fieldwork. On the one hand, interviews of persons concerned with the Pangara River conflict were undertaken. The opportunity was used to generate confidence and trust. Several visits to the site were made, initially to physically inspect the river against the claims and counter-claims and later to tentatively suggest the way forward. Based on preliminary conclusions drawn from the library research as well as from early indicators gleaned from the ongoing interviews, a possible resolution agenda began to take shape. During the initial visits, the researchers took the opportunity to portray neutral credentials and build confidence with the community. This was achieved by adopting a very visible presence and by assuring the people that their plight was being listened to. It was also at this early stage that expectations of resolving the conflict were identified and lowered, stressing that any resolution would require the active participation of the community itself.

On the other hand, the researchers engaged all the likely key stakeholders who had been brought in by parties in conflict and therefore had by implication a role in ensuring compliance with any solution to be suggested. *Exactly what role the Police, the Ministry of Water and Development officials and the Pangara River Community had to play was also deliberately outlined to them by the researchers. This was to constitute the defining aspect in eventually arriving at a solution*. It was suggested that everyone had to get under one roof in order to thrash out modalities

for a permanent solution. In all the divided groups mentioned above, no one appeared conscious of the fact that the problem lay in environmental factors and unpredictable rainfall pattern changes. Everyone appeared set on blaming the other party.

Research revealed several anomalies. The second walking of the river by the researchers in the company of Ministry of Water and Development officials with the police in attendance revealed that the officials had lost the respect of the two factions of water abstractors they were supposed to preside over. It was suggested to the officials that they needed skills to deal with such types of problems in future and that they had to be exposed to basic conflict management training and techniques. The office agreed with this observation and left it to the CDS to arrange relevant courses and training to which they would release officials. After the two factions had interacted with each other for a while they soon realised that the solution did not lie with the government water agents. There was therefore an air of disdain for each other and frustration at the failure of the government officials, who were legally empowered to address problems around water, but had failed to live up to expectations.[15] In the case of the police, the nature of the problem was baffling. A group of affluent people armed with legally registered weapons, threatening to shoot at each other for a vague cause that apparently disappeared during the short rainy season, presented the police with a dilemma. The best they could do was to caution participants who had violated private property and were already taking each other to court. In their view, the courts would soon settle matters once and for all. This perspective only reflected how the police are trained and which duties they expect to deliver. Undertaking a complex conflict resolution exercise was beyond their terms of reference and experience. Apart from keeping the peace, the police did not wish to be involved, as they were clearly not equipped. However, as far as the researchers were concerned, the role of the police at this stage was to convince the Pangara River Community that the initiative enjoyed the support of the law and any options put forward would also be fully supported by the government agency. The second highly visible survey had the double purpose of demonstrating the team s attempts to understand the nature of the problem outside the involvement of the community, and of making plain that any findings would be brought back to a forum in which they as community would be fully represented.

A local hotel had seen its patronage seriously affected as the factions in the previously close community sought to avoid coming into contact with one another. Secondly, the establishment was now supplying water to some of the residents. Business had become a casualty of the water crisis.

After several visits to the area, including at least two week-ends designed to catch the Absentee Landlords , and establishing physical contact as well as wide ranging consultations with the community, there appeared a consensus that they were prepared to sit and discuss the way forward. During the visits, it was patiently made clear:

(1) that no solution imposed by officials could be made binding; and
(2) that no solution was possible without the participation of the enemy .

In discussions with either faction, the researchers also made it clear that they would be conveying the substance of the talks to the other side. This immediately introduced transparency and removed rumour in the evolving process. By so doing, negotiations already got underway as different points of view, previously privy only to the community, became known and were deliberately repeated by the CDS team. Already the team was gaining confidence and asserting itself in the intimate affairs of the Pangara River Community with their acceptance.

From the deliberations mentioned above, and certainly from the confidence that had been generated by the involvement of the CDS team, the consensus emerged that each faction would be amenable to a meeting of all concerned. This meeting would try and find a permanent solution. Astonishingly, the Absentee Landlords and the third neutral group were in the forefront of this initiative. The Full-Time residents group was ambivalent about the idea at first and had to be worked upon to see its value. Furthermore, business grabbed at the opportunity and donated its conference room as a neutral venue.

An extensive advertising campaign of the impending meeting was undertaken. Invitations in the form of CDS circulars outlining the basic agenda were dropped at each plot entrance or left with anyone at home. Placards were placed at the local hotel, which was the venue for the meeting. The author also wrote to both government departments of the Police and the Water and Development Ministry advising them of the intention to intervene and the suggestions that were going to be put forward.

The Meeting: Goals and achievements

Several objectives were to be achieved by the meeting[16] and this called for careful planning and execution. First, the way forward lay in coming up with a solution that would be supported and be in accordance with the Water Act. Secondly, the implementation of the solution had to be community based. Participatory incentives

were to be explored. The question of water being provided by government for the whole community or establishing a dam through donor support was to be investigated. Thirdly, a policy evaluation mechanism — which would ensure compliance once agreement was reached and understood by all — would be agreed to at the meeting.

In presenting the above suggestions, it was the view of the author that it was important to demonstrate knowledge about and sensitivity to the crisis as well as the predicaments of each of the key players, i.e. the three factions alluded to above, the police and Ministry officials.

Eighty per cent of the plot holders turned up at the meeting. A fair number of those unable to attend had passed on their voting powers through proxy notes that were handed to the convening authority and chair, the CDS. As agreed, government officials from the departments involved attended in their unofficial capacity .

The meeting started off with a presentation by the author, which was designed to allay fears that the process would be one of merely finding scapegoats. The research findings on environmental and ecological changes that gave rise to the problem were therefore stressed. Everyone was reminded that no meaningful progress would be made if fingers were pointed at culprits before elaboration of all the factors influencing their predicament. Then mention was made, without being specific, of the impact of increased population brought about by the community s practices. No reference was made to the personal clashes or existing divisions tearing the community apart, which the audience knew the presenter was aware of. With the police and the Ministry of Water and Development officials sitting in, it was evident that some of the more quarrelsome characters had their natural disposition reined in, thus allowing for an informed and constructive criticism. In conclusion, it was pointed out that the divisions in the community could not solve the problem, but that the full co-operation of everyone was needed. Mention of a possible donor funded dam project to benefit the community and the adjacent Communal Area was made following preliminary investigations which showed that government could support such a venture if properly put together.

Meanwhile, one of the vociferous characters, with a sheaf of proxy votes left to her by absent supporters, was made responsible for taking minutes. Not only did this make the person one of the organisers of the meeting, but a considerable number of votes already passed under the proxy rule were also brought into play almost by default.

By the end of twenty minutes, some of the poor listeners were beginning to fidget — a clear sign of loss of concentration. The presentation was then quickly summarised and the meeting moved into an interactive seminar mode.

The next hour was spent allowing suggestions from the floor to come through. Most took the opportunity to vent long held frustrations and to score cheap points over the other faction . After a while it was clear that even this was not going to produce a solution. The initiative was once again taken up to drive the process towards committing individuals present to reach a solution.

The most obvious solution was the setting up of a River Board composed of all factions . According to the Water Act, a river board can be established to operate under the authority of the Minister of Water and Development. Such a board may be constituted by any people who consider themselves stakeholders and interested in the equitable access to and distribution of water, and development of a river system. They are then simply required to inform the Minister of their existence. A River Board so established is empowered under the Act to formulate, based on majority decisions, any development plans related to water issues. The plans so mooted are then incorporated into the regional and national plans if they are in line with the general thrust of government development policy.

What the meeting agreed upon, can be summarised as follows:

- With suggestions from the floor, after prominent members of each faction had been put forward by the researchers, the Pangara River Board was appointed. The last laugh was to be had by the participants who overwhelmingly voted for the Board to be chaired by the CDS for a year. This, it was indicated, would continue to build confidence amongst the key players.
- It was decided that from that moment on all would begin to observe the limits of their Water Rights in a process that was going to be policed by the new Board with the help of government officials. Water gauges were recommended to be attached to the diesel or electric engines in order to monitor levels of abstraction.
- It was agreed that all illegal contraptions would be removed without questions asked either by their owners or by the Board.
- The Board through the support of the Ministry of Water and Development was to organise the deployment of water bowsers at strategic points along the dividing road in cases of severe water shortages in future.

- In order to reduce costs the Board was expected to come up with fund-raising proposals and to administer bore-hole requests from the community as a group. Government would also be approached on behalf of the community to solicit cheaper ways of sinking bore-holes or wells.
- The Board was to consider the possibility of establishing a water purification plant on the nearby hilltop to serve the whole community.

A follow-up meeting was then scheduled to take place at the Centre for Defence Studies, University of Zimbabwe, which members of the Pangara River Board would attend.

This was a milestone in diffusing a potentially explosive situation and developing a new situation which saw all hands on board pulling together. Initially only a few neighbours had a dispute on amounts of water drawn from the same source. The conflict escalated when a couple of parties became involved, and when government agencies responsible for the administrative and legal upkeep of public behaviour over water failed to bring about a permanent solution to the Pangara water crisis.

It is our contention that the neutrality of the research team and their contribution in clarifying the underlying problem went a long way in enabling the Pangara River community to overcome their water shortage predicament.

4. RECOMMENDATIONS

This paper seeks to raise awareness of the potential for conflict surrounding access to water *which is going to be in short supply by 2020* and to suggest some approaches to the problem. From the foregoing it is clear that some states in Southern Africa are better prepared for the eventuality than others. In a bid to introduce balance and provide ameliorating anticipatory mechanisms for diffusing conflict, especially in the unequal states, the following recommendations are put forward:

(1) That SADC should establish a Regional Water Authority with adequate powers to co-ordinate the equitable abstraction of water by member states from the basin — or regional Water System (see Water Act of Zimbabwe 1996:588-589).
(2) That SADC be responsible for co-ordinating national water-related development or initiating planning at a regional level.
(3) That SADC raise funds or mobilise resources for the technical and material

requirements of those states unable to muster these as a result of their economic conditions. This should act as an incentive inducing them to co-operate.

(4) That a Regional Water Authority be formed, and empowered with the mandate to arbitrate and have the final say in disputes involving water use.

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NOTES

1 The author firstly wishes to express sincere appreciation for the kind invitation, reception and hosting of the Research Team from the Centre for Defence Studies, University of Zimbabwe, by the Pangara River community. This comprised Research Assistant Colonel Herbert Chingono, BA Honours graduate, and the writer. Secondly, the writer wishes to thank SAREC Funding on Human Rights and Democracy for enabling the team to conduct research as well as practical conflict management reflected in this case study on water conflict amongst the Pangara River community. While those involved in the Pangara River community, government officials from the Ministry of Water and Development, and the Police will no doubt recognise themselves from the discussion, a deliberate decision to withhold names of participants for the sole reason of protecting their identities has been taken. The author also wishes to acknowledge the sterling efforts of Colonel Herbert Chingono to bring all the parties together and facilitate the smooth conduct of the project.

2 Executive Director of the Centre for Defence Studies at the University of Zimbabwe, and Lecturer in War & Strategic Studies, after having served (until 1989) as Lt Col in the Zimbabwe Defence Forces. Nearing the completion of a PhD thesis on The Development of the Southern Rhodesian Defence Forces from the Defence Act, 1926, until dissolution of the Federation in December 1963 .

3 Given the impasse currently obtaining within the Southern African Development Community s (SADC s) Organ on Politics, Defence and Security.

4 Hydrologists define drought as periods of rainfall shortfall affecting the surface and sub-surfaces supplying reservoirs, stream flows and lake levels of ground water. Meanwhile, economists erroneously included the meteorological, hydrological and agricultural elements as the basis of the level of dryness and duration of the dry period.

5 Interview, Innocent Balemba Zahinda, Bradford, UK, December 1998, referring to the 1935 drought in the former Zaire.

6 As well as later public statements by the political leadership.

7 Malawi s fishing industry employs more than half a million people.

8 Where a UN Ground Water Survey of Easter, Central and Southern Africa, completed in 1989, is cited.

9 As pointed out in the same source, the illustrated and scientifically accurate work is meant to serve as a tool for decision-makers in developing appropriate agendas that relate to water as a security and conflict issue in the region. Extensive use of its data has therefore been relied upon in this article. The same source also provides an average indicating that the rural community uses 25 litres per day per individual while the urban community lap and gulp over 500 litres per day per individual.

10 Wilson Ncube, Water: Lesotho s major export , Story 2.2, in Chenje & Johnson 1996:42.

11 The Water Factor in DRC and Lesotho , *SARDC News Features*, 15 October 1998 (in which *African Business* was cited by P. Johnson).

12 Because of the prevailing adverse economic situation in Zimbabwe, one of the major dam and road construction concerns has not been tendering for any work in the last 18 months and is preparing to relocate.

13 Also known as Rodel Township. Map reference: *Zimbabwe — Juliasdale, [Second Edition] 1832B3, Scale 1:50 000*. Area under discussion within enclosure: Grid Ref. from 5473 going East to 5773 then South to 5770 and then West to 5470. See map sections attached.

14 Water Rights issued by the Administrative Court authorise abstraction from 14 December until 1 April every year.

15 This is a salutary lesson for those in authority who fail to carry out functions allocated to them.

16 Held at the Brondersbury Hotel on 12 April 1996, and attended by about 30 people. (The attendance list has been submitted to ACCORD.)

Civil control over the security institutions in South Africa: Suggestions for the future and notes on replicating the experience in Africa[1]

Ian Liebenberg,[2] Charl Schutte[3] and Anthony Minnaar[4]

ABSTRACT

It is obvious that security institutions can play meaningful roles in preventing, managing and even resolving conflict. This can especially be the case when they operate in a democratic context, and when they are duly democratised in their own systems of organisation and ways of functioning. This article is based on the conviction that civil oversight of security issues and agencies is so important that it has to be institutionalised. A new mindset about security is therefore promoted. Transparency and accountability are strongly emphasised. Various recommendations are made and discussed, with regard to proper participation in policy making, observing, monitoring, overseeing and advising. The thrust of the argument is that institutions and organisations outside the state should be empowered to keep watch, sound warning signals, and ensure that the ever necessary security work is done in ways that are truly democratic, and therefore really effective.

1. CONTEXTUALISING THE DEBATE

The global context

For many observers there seems to be an observable tendency towards democratisation in many countries throughout the world (Agbango 1997; O Donnell & Schmitter 1986; Van Hanen 1990). Among the transitionists there are even those who foresee a democratic revolution on the globe — by implication this revolution is moving worldwide towards liberal democracy and multi-party politics (Diamond 1992:24-25).[5] Greater democratisation appears per se to require security operations with greater legitimacy.

The changing context of social relations in South Africa brought about by the transition of the country to more democratic rule through negotiation and structure-changing elections also brought about different requirements for debates regarding security policy. The main aim of this article is therefore to assist critical new thinking regarding security.[6] Then, to draw policy implications for the governance of security and intelligence gathering activities. Lastly, as far as possible, to contribute to transparency and accountability regarding the role and functions of security and intelligence staff by encouraging more open public debate on these issues. *The article may therefore contribute research-based findings to the discussion on some of the most pressing security issues in the public mind at present. In very real terms this contribution is about the governance of security* , a phrase mooted by the Ghanaian theorist, Eboe Hutchfull, and recently also used in the South African context).[7] Such good governance of security may assist in regulating intra- and inter-state conflict.

Whatever one may understand under the term democratisation and the attainment of democracy (it may or may not include multi-partyism), the *minimum requirements* are (i) a sound practice of human rights protection, inclusive of second generation human rights; (ii) the space and freedom (under protection of the state) to mobilise, debate, conduct dialogue and agitate for social reforms or even transform the state and political structures peacefully, which may or may not imply a change of government); (iii) a legal system that is endowed with the capacity (as a specified right) to veto actions of the government executive if deemed unlawful or contrary to the best democratic practice — i.e. infringing on human rights or the rights of self-associated groups; (iv) the institutionalisation of civilian oversight (and therefore implied veto) of security institutions; and (v) the implied vision of, and right to

campaign for an equitable and just (re)distribution of wealth by the citizenry, provided it takes place peacefully.[8]

At stake in this article is the issue relating to the institutionalisation of civilian oversight of the security institutions in a young democracy such as that in South Africa. The institutionalisation of civil oversight is a common problem in states changing from authoritarianism to democracy. Latin-American states after the demise of military regimes were faced by such challenges. So are states in Africa that have to move from military rule or racially/tribally dominated politics to democracy. Post-Amin Uganda and post-Apartheid South Africa are two examples.

The South African case is not unique, but the research question regarding implementing civilian oversight is somewhat problematised by the fact that the *ancien r gime* was both authoritarian and praetorian (Cock & Nathan 1989; Frankel 1984; Liebenberg 1990a) and a state marked by racial domination through modernisation (Adam 1971: esp. chapter 6).

The military did not move centre-stage through its own choice but was invited in by the politicians of the time under the rubric of Total Onslaught . Hence the extensive structures of the national security management system (NSMS) were put in place (Frankel 1984:29ff,71ff; Seegers 1996; Swilling 1990; Liebenberg 1990b, 1994a, 1998a).

The military and the security police were not only involved in fighting the revolutionary onslaught inside the country, but also outside the country (Leonard 1983:59ff; Israel 1998:343ff; Du Pisani 1988).[9]

The context of Africa

Julius Ihonvbere s cautioning note that the military remains one of the major obstacles to democratisation in Africa struck home. Regardless of the positive light some may put on people like the late Thomas Sankara of Burkina Faso, Jerry Rawlings in Ghana, and Muammar Gaddafi in Libya, the record of the African military has been one of disaster (Ihonvbere 1997:306). The situation , he continues, in Zaire under Mobuto Sese Seko, Togo under Gnassingbe Eyadema, Ethiopia under Mengistu Haile Mariam, Benin under Mathew Kerekou, Somalia under Siyad Barre, and Sudan under Jaffer Nimeiri attest to this (Ihonvbere 1997:306). As for Nigeria: The Nigerian case amply demonstrates that the military as an undemocratic commandist organisation is incapable of initiating, nurturing and consolidating

democracy in Africa (Ihonvbere 1997:306).[10] On Nigeria, Wole Soyinka is even less complimentary: But we (as Nigerians) can no longer assume the good faith or good intentions of leadership We need to have leadership circumscribed and bound by strict provisions (Soyinka 1999:33).

Within this context this contribution will deal with civilian oversight of security institutions in South Africa.

A changing policy environment in South Africa

Since the beginning of the 1990s the policy environment in South Africa went through dramatic changes. The unbanning of the liberation movements in February 1990 ushered in an era of negotiation and bargaining for a social contract and institutional choices that previously eluded South Africa (Liebenberg 1996a:22ff).[11] After many years of resistance against apartheid in South Africa the nature of politics swung towards a negotiated settlement (Muthien 1994:1-2).[12] Through the multi-party negotiation process (MPNP) in Kempton Park, which followed the Groote Schuur and other protocols, protracted negotiations by political stakeholders and negotiations by party political pacts led to an interim constitution (IC). The IC was followed by non-racial elections (or what is termed in transitional theory founding elections) for a constitutional body. This constitutional body or Constitutional Assembly (CA), was charged with writing a new democratic constitution for South Africa.[13] In 1996, the new South African Constitution, Act No. 108, came into being.

Democratisation for the ruling government, at least up to 1996 in our view, goes beyond gaining political power through parliamentary elections. It includes empowering institutions and organisations outside of the state to participate in the decision-making process. This was clearly set out in an ANC government policy document, the Reconstruction and Development Programme (RDP), before the elections (De Kock & Liebenberg 1995:106-111). The ANC stated that democracy for ordinary citizens must not end with formal rights and periodic elections but go further, without undermining the authority and responsibility of elected representative bodies. The democratic order they envisaged was to foster a wide range of institutions of participatory democracy in partnership with civil society and facilitate direct democracy. The 1994 elections marked a dramatic change in the policy- making process in South Africa. Several institutions and processes have since been introduced and the role of the state in relation to civil society had to be rethought (Liebenberg, Mpanyane & Houston 1998).

The New Constitution

To a certain extent the MPNP and the introduction of the interim constitution had already set a background for the ground-breaking elections and the introduction of the new constitution in 1996. The interim constitution as negotiated during the MPNP at Kempton Park was signed on 18 November 1993 and the Constitution of the Republic of South Africa Bill (1993) was passed by parliament in December of that year.

The executive power was to be balanced by inter alia the Public Protector and the Human Rights Commission (Amato 1994).

The creation of one single national defence force acting within the constraints of the chapter on Fundamental Rights was built into the interim constitution. The Transitional Executive Council (TEC) was targeted with the responsibility to carry this out (Amato 1994:126-127). For the first time in South Africa the interim constitution (1993) linked and related fundamental human rights to security issues. This was indeed a giant leap ahead for a racial oligarchy underpinned by securocrats.

The institutionalisation of the New Constitution (Act No. 108 of 1996) introduced a new democratic order. The socio-political environment was dramatically changed, giving rise to regions or provinces and a variety of new institutions (such as Provincial Assemblies, Intergovernmental forums (IGFs) and Nedlac).[14]

As power relations shifted dramatically the changes in processes of decision making (i.e. policy conceptualisation, policy making and implementation) followed suit. From a previously semi-secretive, technocratic, authoritarian mode of policy making a shift to a more public and accountable decision-making process took place.[15] This impacted also on the security institutions (Cilliers & Reichardt 1995, Williams 1998:17-18).

2. DEMOCRATISATION AND THE MILITARY: THE NEW SECURITY DEBATE[16]

What is generally referred to as the third wave (of democratisation) and/or the democratic revolution started in the 1970s in Southern Europe when three previously authoritarian states democratised dramatically.

In Portugal the Caetano regime fell in what was to become known as the Carnation Revolution or Revolution of the Flowers . This followed the publication of a contentious book, *Portugal and the Future* (*Portugal e o Futuro*), by an influential general in the military who was experienced in deployment in the Portuguese colonies, Ant nio de Sp nola. De Sp nola questioned the tenability of Portugal, a rather poor economic power,[17] retaining repressive control over its colonies. This led to agitation amongst an already discontented military realising the unworkable political-military situation for Portugal. In a nearly bloodless coup the Armed Forces Movement (*Movimento das for as Armadas,* AFM), consisting of younger officers, took over government control in 1974. *A National Salvation Committee* (*Junta de Salva ao Nacional*) was appointed, headed by de Sp nola. Later, during tense interaction between left and ultra left , the Junta was restructured and headed by Gen Costa Gomes. In tense conditions constituent assembly elections took place in April 1975 with a 91,7% voter turnout. In 1976 a new constitution was passed. Opello aptly refers to this as Portugal s transition from absolutist monarchy to pluralist (Western-styled) democracy (Opello 1991:98). The Carnation Revolution had won (see Ciment 1996:104).

In Spain the authoritarian regime disintegrated after the death of Gen Francisco Franco and the institutionalisation of a constitutional monarchy in Spain after 1977.

A military reluctant to change, yet bewildered by the socio-political transition in Spain, had to see how not only multi-party politics came into being, but also degrees of regionalisation (call it federalisation, should you so wish).[18] Even an attempted coup (1981) could not reverse the trend towards democratisation that was set in Spain. The constitutional monarchy acted on the challenges to reform the police forces. Restructuring took place — one of the reasons why the 1981 coup could be averted.

Article 104 of the 1978 constitution (ratified by a referendum) defined the task of the protection of the free exercise of rights and liberties and to guarantee the security of the citizens (Story & Pollack 1991:138). By 1986 the process of organic law-making regulated the status of the police and their subordination to central or local government authorities (Story & Pollack 1991:138).[19]

During the same time far-reaching reforms in the military took place. A new Chiefs of Staff was created, and civilian oversight strengthened. The army was trimmed and modernised. Command and control structures were decentralised and regionalised.

The *de facto* situation in Spain changed. According to Maravall and Santamar a (1986), the military establishment, limited as it was by law and political mechanisms, could merely express needs within the recognised pluralism of interests. The strategy of confrontation had to be converted to one of negotiation. Needless to add, such reforms acted as a powerful mechanism to minimise intra-state conflict and substantially improved the Spanish human rights record.

In Southern Europe, Greece followed a similar path (Whitehead 1991:46-48,56-57; Verney & Couloumbis 1991:103ff). In the following decade Latin American states, previously authoritarian and/or praetorian, such as Brazil, Argentina, Chile, Uruguay, were to follow suit (Liebenberg 1996b).[20]

In a highly politicised post-colonial Africa, the extreme was often the rule. The military in various forms crept (even swept) into control to such a degree that Samuel Huntington distinguished various typologies of praetorianism, i.e. *Reformist praetorians, radical praetorians, mass praetorians* and even *the soldier as institution builder* — albeit the least numerous as a phenomenon (Huntington 1968). While Latin America, the Middle East and Central South East Asia were struck hard by this phenomenon, Africa also fell prey to this (Decalo 1989:547ff). Nordlinger identifies various reasons for military intervention, such as civilian pressures, fear of communal disintegration (due to civil or ethnic/religious strife) or national disintegration (e.g. Sudan in the 1970s, Nigeria), preservation of the status quo, and a vision of progressive change (e.g. Egypt in the 1970s). However, he observes that whatever the reason for military (or securocratic?) interference, military regimes are notoriously unstable (Nordlinger 1997:138-139, 150-151,164,171). He argues that military regimes have an average life span of approximately five years it can be said that they are inherently unstable (Nordlinger 1977:139). The extent to which this happened on the African continent probably partly started an intellectual trend known as *Afro-pessimism*. (This is not to say that praetorianism and autocratic rule were the only things responsible for Afro-pessimism at the time.)[21]

In Africa as elsewhere[22] praetorianism implied an independent local power (Du Pisani 1988:3). Praetorianism can obviously be fostered by various social conditions such as: the collapse of executive power, low levels of institutionalisation, incapability to deal with modernisation, urgency to speed up industrial growth or land reforms, absence of a unifying ideology, segmented interests being monopolised by a class or ethnic or religious groups, one-sided impositions of nation building or other ideologies (Du Pisani 1988:3-4).

Nordlinger (1977) refers to various forms of military intervention. Andr du Pisani, a Southern African theorist, points out that praetorianism manifests itself differently in Africa, the Middle East and Latin America (Du Pisani 1988:4). For him the South African military by virtue of its weird mix of intervention in regional (Southern African) affairs and internal affairs partly resembled a frontier army because of its role in the region (Du Pisani 1988:4). Philip Frankel in his work (1984) focused more on internal structures which amounted to a garrison state or generic term praetorian state . Stephen Davis (1987) stayed within this rather limited analysis by referring to South Africa as a bunker state . So did Ian Liebenberg in his earlier publications (1990a, 1990b).

A need exists to modify these descriptions to praetorianism of a special type : the South African military being invited into politics by the National Party when the modernisation of racial domination as Heribert Adam (1971) referred to it, could not sustain legitimacy for the minority state.

(1) Thus, the military in South Africa moved into politics not by choice but by invitation of white supremacist-politicians.
(2) The South African Defence Force (SADF) also became extensively regionally involved as a destabilising force. All these contributed to a praetorianism of a special type (Liebenberg 1996a, 1996b, 1997a, 1997b:41-48, 1997c:105-132).

The acceptance of its New Constitution and Bill of Rights (Act 108 of 1996) brought dramatic changes in this security context.

3. RECOMMENDATIONS FOR THE FUTURE: CIVIL CONTROL OVER THE MILITARY[23]

The following practical suggestions are brought up as future starting points/guidelines relating to civil-military debates in South Africa. Needless to say, the authors of this article recognise the need to acknowledge the insight that different forms, different traditions will influence the nature of control and oversight (policy, process and institutions) by civilians over the armed forces, without necessarily agreeing with Malan in all respects in his analysis (Malan 1997a, 1997b).

Many of the recommendations made in the first edition of *The Hidden Hand* (Minnaar, Liebenberg & Schutte 1994) included in part or as a whole the need for a

process of transformation of the security environment. The constitutional context was created by the new constitution of South Africa. This constitution contains a Bill of Rights stressing human dignity, equality, freedom and the rule of law within the ambit of accountability, transparency and openness (Chapter 1, Section 1(a) to (d)). Section 2 describes the supremacy of the constitution. Section 3, dealing with the common citizenship and the equal rights of citizens, is also relevant. This is expanded upon in the Bill of Rights, which emphasises the freedom and security of the individual, human dignity and the right to live (Chapter 2, Sections 10-12). Other relevant areas such as the right to privacy, freedom of belief and freedom of association (Sections 14, 15, 17 and 18) are considered important to the document. This impacts on civilian oversight over security matters.

Strengthening civilian monitoring

Chapter 2 of the constitution refers at length to the rights of the arrested, detained or accused (Section 35, Subsections 1-5). One has to read Chapter 2 in conjunction with the governing principles regarding national security in South Africa (Chapter 11). The latter deals with the structuring and responsibilities, as well as command functions of the South African National Defence Force (SANDF), the South African Police Service (SAPS) and the intelligence services (Chapter 11, Section 198 (a) to (d), Section 200, (1) and (2), Section 205 and further, Section 209 (1) and (2)).

The principle of civilian monitoring of the activities of these agencies, specifically relating to intelligence service, are contained in Chapter 11, Section 210, Sub-sections (a) and (b). These have been incorporated in order to ensure legitimacy, accountability and transparency. All of these constitute what can be termed the formal controls within the South African security system. Part of the informal controls, embarked upon since 1994, has been the Defence Review Process, an initiative of the Ministry of Defence (MoD) and the SA Defence Secretariat. This process includes wider consultation with civil society and has been an attempt to complement formal controls. Informal mechanisms imply mutual trust and the wide acceptance of shared values between citizens, political leadership and security bodies within a constitutional state — in a sense then implying Rebecca Shiff s Concordance theory.[24] While the Defence Review Process may still fall short of such ideal wide consultation, it remains a valuable first step in bringing civilian input into the realm of Defence Policy formulation. Critical reflection on and an analysis of weak and strong points in the process may well contribute to greater inclusiveness and participation for civil society in the process of transforming

security institutions, their role and structures in the new democratic dispensation.

Oversight mechanisms

The question of a representative national security forum mooted in the first edition of *The Hidden Hand* (Minnaar et al 1994) has since 1994 partly been dealt with through the establishment of the National Intelligence Co-ordinating Committee (NICOC). In addition, intelligence information is fed to both the cabinet and the parliamentary multi-party portfolio committees on defence, police and intelligence by the Cabinet Committee on Security and Intelligence (CCSI). Moreover, accountability and transparency within the various services have been strengthened by the requirement that each head of service submit an annual report to both the minister concerned and the inspector-general on the activities of those services (Intelligence Services Control, Act 40 of 1994).

In terms of effective political oversight, several formal structures have been instituted since 1994, inter alia: civilian secretariats for both defence (SA Def Sec) and police, an Independent Complaints Directorate (ICD) for the police, as well as the Office of the Public Protector. The SANDF is currently in the process of setting up an independent military ombudsman s office. Other more informal measures have been toll-free telephone numbers through which the general public can anonymously report corruption and human rights abuses. The establishment of a statutory body such as the Human Rights Commission (HRC) to promote the observance of, the respect for, and defence of fundamental human rights and being able to recommend to government, give it useful value — and some political teeth, although some observers and human rights practitioners think its political teeth are perhaps not strong enough. While it may be limited in financial capacity, it does provide in interplay with other statutory and non-statutory bodies some indirect civilian control over security issues (Amato 1994:118).

Inspectors-general

Although the Intelligence Services Control Act (Act 40 of 1994, Section 7) provides for the appointment of an inspector-general for each service (defence, police and intelligence), no such appointments have yet been made due to political and financial constraints. One of the specific functions of the inspectors-general is to monitor and act as an ombudsman in particular regarding any unlawful intelligence activity or significant intelligence failure of that service and to make recommendations for corrective action to be taken (Section 7, Subsection 11 (a) to (b)). *It is strongly*

recommended that the appointment of these inspectors-general should urgently be proceeded with.

In line with our proposal in the first edition of *The Hidden Hand* (Minnaar et al 1994), a need still exists for a precise definition of the role and missions of intelligence agencies. This will assist in preventing these institutions from exceeding their brief, duplicating functions, or intruding into one another s terrain, as was the experience under the P.W. Botha and F.W. de Klerk governments.[25] Furthermore, there is a need in terms of enhancing interdepartmental co-ordination on intelligence gathering matters, for clear and precise role clarification for each service. While the policy formulation process in defence has evolved into a Defence White Paper and a consultative process in the form of the Defence Review, which helped to set the parameters for defence policy, similar policy guidelines are still lacking in the South African Police Service and in both the National Intelligence Agency and the South African Secret Service. *It is recommended that guidelines of this nature for each of the relevant agencies are more speedily addressed and finalised.*

Khanyile observes that there are various accountability options such as (i) universal accountability and (ii) selective accountability (i.e. fiscal, programme or process). These accountability options should be with regard to various levels within and outside the intelligence community. Moreover; the same locus should not be responsible for both control and oversight (Khanyile 1997:3-4,6). Given the available post-apartheid structures, he argues: Despite innovative legislative measures the agents of oversight, particularly the ISCI will need to rise beyond (symbolic) structures and give meaning to what the constitution and national legislation require of them (Khanyile 1997:14). The South African legal practitioner, Kuzwayo, in essence concurs with the observations made by Khanyile (Kuzwayo 1998).

Protecting whistle blowers

Whistle blowing , the early warning capability of bureaucrats or citizens to notify the public or those in charge if derogation from laid-down rules occur, should be protected. The Open Democracy Bill can assist in this. However, by implication, the rule of exception applies. Provision is made for secrecy when dealing with security issues aimed at changing the constitutional order of the Republic by the use of force or violence (Open Democracy Bill, Section 71).[26]

The question of public access to information and covert activities remains pertinent. *It is suggested here that these rights should be entrenched within the pending*

amendments to the Criminal Procedure Act regarding the access of those accused of crime to their own charge sheets. Also that dockets and indictments should be made more freely available prior to cases going to trial. Moreover, this refers in equal measure to the protection afforded to citizens in the Open Democracy Bill (ODB) and access to public information guaranteed by the Public Information Bill. The ODB is a step ahead, but is to some, vague, still open to misinterpretation by the judiciary, and suffering from over-inclusiveness and indeterminacy (Pimstone 1998). *In short, the rights are potentially outlined, but are still to be won.*

Two areas of concern are therefore: open access to information, and provision of legal access to information on covert activities by citizens in instances where the citizens are of the opinion that their rights have been violated. It is imperative that such access be ensured through formal means rather than that informal access by citizens to information takes place such as was the case in the incident in which a member of People Against Gangs and Drugs (PAGAD) was found in possession of a sensitive and confidential intelligence report on the organisation (1997/98). *While such openness might well be embodied in the Open Democracy Bill, we propose that active recognition be given to the protection of whistle blowers in both the public and private sectors. This pertains particularly to the areas of defence, arms procurement, intelligence, policing and covert activities inside or outside South Africa.*[27]

Not only emerging democracies have to deal with the need to protect whistle blowers , be they private individuals, bureaucrats, journalists or employees. Established democracies are also confronted with this problematic issue. Significantly, while Sweden happens to be quite far advanced in protecting whistle blowers , in Britain and America where there is less protection, whistle blowers in a variety of cases came off worse (Griffith, Butler & Dehn 1995:21,29,31,41ff).

The active creation of an atmosphere conducive to transparency and accountability as well as the protection of whistle blowers belongs not only in the area of formal or objective controls. While objective controls should be pursued, subjective or informal controls by means of active intervention by civil society elements should remain an area of vital importance in terms of monitoring of security covert activities i.e. by state agencies. The Defence Review Process and the Open Democracy Bill are cases in point, but civil action (petitions and lobbying) is another useful avenue.[28]

Participatory formulation of policy

The formulation of security policy should not be confined to executive and

administrative officials. It requires greater accountability, open debate and the active participation of elected representatives, the public and sectors of civil society — especially in a young democracy such as that in South Africa.

Effective and ethical policies in the area of defence/security, policing and intelligence gathering cannot be evolved or applied in isolation from the more general questions of the relationship between the ordinary people, the legislature and various sectors of the government apparatus. *In this regard the adherence to existing codes of conduct (for example those for the police and the whole public service) should be deepened and where they do not exist, the immediate institution of codes is advised.*

Good human relations, linked up with a watchdog role, between all involved in this endeavour, are imperative. In the area of policing and the SAPS role, the work done by the ICD in this regard should not go unnoticed. However, more is still to be done.[29]

A morally sound political culture

Activities of a covert nature are much better directed and far easier to oversee, if the political culture within which they are carried out, is healthy and functions well. Once again, this implies the complementary, committed interaction between objective and subjective forms of control within a democracy, more so in a fledgling democracy such as ours.

And again issues of morality surface which should not be glibly passed over (Seegers 1994:77ff).

Covert activities cannot be above the law or have a privileged status. They should only be put into practice if they meet a genuine need, if they are coherent with the overall strategy of the political leadership, as well as reflecting public interest. They should also genuinely represent the best use of time, effort and resources to solve a particular problem. And most importantly, covert activities should as a rule of thumb in a democracy never override human rights within a nation of self-chosen citizens (Pienaar & Liebenberg 1998). Simply put, a democratic state stands under the imperative that it is our communists, fascists, anarchists, liberals, conservatists and as citizenry they are to be respected in their associations, however outspoken they may be (Pienaar & Liebenberg 1998:415). The counter-obligation on the citizenry to associate and organise peacefully, however, does apply as much.

A National Security Advisor?

The (re-)institution of civilian control over the military remains a challenge in newly democratised societies. In Africa the challenges are as daunting. Luckham in his analysis rightly asks whether an epitaph can be written for the scourge of military intervention in the context of democratisation in Africa (Luckham 1995, 1996). Luckham remains tentatively optimistic (Luckham 1995, 1996).

In our research on these issues the idea has been mooted that the institutionalisation of the post of a *national security advisor* may benefit civilian oversight.

Recommendations made previously concerning the appointment of a national security advisor may be worth revisiting (Minnaar et al 1994; Schutte, Liebenberg & Minnaar 1998). Part of the debate revolves around such a position being a specialist post for *formulating policy advice* on security decisions. The incumbent should be in no way attached to one particular arm of the security services or intelligence agencies nor be a political appointee by one party. Rather she/he should be appointed as the result of multi-party consensus on such an appointment. *He/she should have no executive functions, but should act in a strictly advisory capacity.*

Democratisation of budgets?

The political sociologist and practitioner, Dr F van Zyl Slabbert, has consistently stressed that democratisation goes hand-in-hand with the democratisation of the budget process (Slabbert 1992). But democratisation of budgets is extremely complex, if at all possible. For the purposes of this contribution we assume that *this implies that in the budgets for intelligence operations greater financial accountability by the services of their budgets should be stringently enforced.* Although the envisaged budgetary oversight by the parliamentary multi-party portfolio committees should ensure this, there still remains a concern considering current practices within the intelligence and security establishment with regard to so-called secret funds and covert budgets . This also applies to financing of arms procurement. *The current practice of transparency through public attendance and participation in debate in portfolio committees should be strongly encouraged — also with regard to secret funds and covert budgets .*

The formulation of security policy should not be confined to executive and administrative officials: it requires greater accountability, open debate and the open participation of elected representatives and public/civil society/community.

Open debate and full participation, where possible, should be augmented by public participation.[30]

Modernisation/reprofessionalisation of security agencies?

In transitions to democracy, one of the problem areas to be addressed is how to reorientate the roles, missions and functions of security agencies stemming from a previous authoritarian regime in order to fit the requirements of an emerging democracy. While admittedly the term reprofessionalisation of security agencies is controversial, the debate regarding reorientation of these agencies cannot be ignored. *During such a transformation process the change of mindset among security personnel and intelligence operatives is crucial. This would include not only the institutionalisation of objective and formal controls but also reorientating the training culture of those structures. Of relevance here are the appreciation of and respect for the constitution, Bill of Rights, domestic law, codes of conduct, the rule of law and criminal justice processes*. Some Latin-American countries such as Argentina have embarked on this process with some success.[31]

At the basis of this lies the factual recognition and acceptance by the military that they are bound by the constitution and the law and as professionals serving the citizenry under civil supremacy (Ba n & Carrillo 1995a, 1995b, 1995c). According to Ba n & Carrillo (1995a), civil supremacy over the military is a political principle of democracy, and at the same time, an expression of military professionalism. *There may be different forms of democracy — and such forms are to evolve from civil conduct in relation to specific contexts and different traditions — but civil control remains the inescapable obligation of any society geared towards the deepening of the process of democracy.*

It is pertinent for there to be adherence to international and national mechanisms to double check on the human rights conduct by civilians/civilian rulers.[32]

Security issues should be conceived as a holistic phenomenon, not restricted to purely military and policing matters, but broadened to incorporate political, social, economic and environmental issues. In short, it requires a rethink of security in the broadest sense. *The overriding objective of security policy should go beyond merely achieving an absence of violent conflict or war by encompassing the pursuit of sustainable democracy, economic development, social justice, racial and gender equality and a safe and healthy environment. It should also include an underlying search for sound human relations in the security field and also in the more general*

field of interaction between state and civil society (or the civil community) as well as between states themselves. In short: it is part and parcel of deepening the process and culture of democracy.[33]

4. CONCLUSION

The need for civilian oversight (and civil-military/security relations) is indeed being debated on the African continent: There is little doubt that the South African experiment on securing civilian control as embarked upon since 1992, is worthwhile. In many respects it proved that South Africans themselves succeeded so far in contributing an epitaph for Frankenstein s Monster (Securocratic Rule). In this sense the (re-)introduction of various elements of civilian oversight over security issues can serve as a conflict-regulating measure in African societies.

South Africans themselves still have a long way to go in ensuring more effective demarcation of security responsibilities, as well as horizontal and vertical check-ups in terms of objective and subjective controls (within the laid down rules, the governmental and institutional structures and from/within civil society). This implies an inclusive civil security debate — inclusive of the opposition in democracies such as ours.

Replicating our experience may well assist other societies in Africa in their attempts to assist democratisation and deepen democracy. However, in replicating it, South Africa has to ensure that our own system is working with excellence before exporting it uncritically. And more, that our model could be a rule of thumb but not a blueprint.

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NOTES

1 This article is derived from a chapter entitled Policy proposals and recommendations concerning covert operations in *The Hidden Hand: Covert Operations in South Africa,* (Minnaar, Liebenberg & Schutte 1994), a follow-up chapter on the same topic in the revised edition of *The Hidden Hand: Covert Operations in South Africa* (Schutte, Liebenberg & Minnaar 1998), as well as a paper entitled *Civil control over security institutions in South Africa: Practical suggestions for the future* by the same authors delivered at the South African Sociological Association (SASA) Conference, Rand Afrikaans University, July 1998.

Insights gained through research on truth and reconciliation processes, especially examples of Truth and Reconciliation Commissions (TRC s) in South Africa and elsewhere are incorporated. Relevant are Liebenberg & Zegeye 1998, and Williams & Liebenberg 1999. This contribution aims to use and strengthen these insights gained by the South African experience to maximise opportunities for civilian oversight as a conflict regulating mechanism to the benefit of sustainable democracy in South Africa, in the first place. We argue that as a conflict regulating mechanism it may be replicable elsewhere, but not uncritically.

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5 The logical march towards the liberal state as the final statehood to be achieved, which Larry Diamond (1992) is advocating, is foreseen by Francis Fukuyama in his writings on the End of History (Fukuyama 1990:8-13). For a critique of Fukuyama s ideas, see Liebenberg 1994b. The interactive relationship between the state and the civil community (or civil society) need not to be seen as the prerogative of the liberal society (see Liebenberg 1997b).

6 Important work in this field has been done. See amongst others Ibbo Mandaza s work (Mandaza 1996) on security in a regional context. Excellent work done by H. Solomon & M. van Aardt-Schoeman (Solomon & Van Aardt-Schoeman 1998) on new perspectives on security should be noted by researchers and practitioners. Work done by Peter Vale at the University of the Western Cape is also relevant in this regard.

7 See for example Shaw & Shearing 1998.

8 The notion of an equitable and just society is a longstanding debate. On South Africa, see Langenhoven 1994:234-239; Van der Berg 1994:240-247; Duvenage & Liebenberg 1996:48-64. As elsewhere the normative and the practical are in interaction. This interaction can be played out, as in the South African case within modes of regulated fora which can be described as corporatism , corporatism of a special type , social democracy , even social dialogue . Broader notions than these are seldom considered or debated. This mainly because of the academic/political debate in South Africa (post 1993) being dominated by liberal theorists (De Kock & Liebenberg 1995:106-111).

9 Some observers even saw the SADF role — especially its involvement in the sub-region — as a

frontier-army (Du Pisani 1988). Others put this in the context of destabilisation (Grundy 1988:88ff; Liebenberg 1990a, 1998b; Hanlon 1986; Leonard 1983:59ff).

10 The remarks stood in marked contrast to earlier more optimistic analyses by (Pan-)African theorists. See for example Odada (1977:254-260), who was still prepared to give military institutions a chance to assist in nation or state building as movers of society (1977:254-255). He cautions though that military regimes in Africa have tended to dampen rather than promote Pan-Africanism (1977:260). Another example: Using Huntingtonian jargon, Claude Welch (jr) (1992:1-18) found himself quite optimistic about Nigerian transition to democracy by the military. Since then a marked pessimism has returned, however (see Soyinka, 1999). Agbango (1997) noted that in the minority of cases popular military regimes in Africa reflected some positive elements. He refers to the case of Burkina Faso under Thomas Sankara (See also Pathfinder Press 1988). In general his assessment of military regimes in Africa, as that of other theorists, is negative (Agbango 1997:267).

11 See also Schlemmer & Hirschfeld 1994:1-5 and Sisk 1995:13, 201ff, 250ff.

12 See also Buitenhuijs & Thiriot 1995:121ff.

13 For negotiations preceding founding elections in the transition from authoritarian rule to democracy in a general context, see O Donnell & Schmitter 1986:37ff,65. For pact making, see O Donnell & Schmitter 1986:37ff. For application of pact making, negotiation and founding elections as cornerstones of a new South African democracy, see Coetzee, Turok & Beukes 1994. See also Liebenberg 1996a:22-55 and Sisk 1995:120ff, 249-256.

14 Adebayo Adedeji in Coetzee, Turok & Beukes 1994:1,3; De Villiers 1995:134. For more detail see Elazar in Licht & De Villiers 1994:62ff.

15 For an expos of the technocratic and semi-secretive policy-making process under tricameralist South Africa, see Liebenberg 1990a:130-141. The outcomes of such approaches are dealt with by Van Vuuren & Liebenberg 1998:95-106. A further unintended outcome that negatively impacted on conflict in Africa, was that a variety of the (semi-)secret front organisations and military personnel/security experts transformed themselves into more or less mercenary outfits. This took place after the unbanning of the liberation movements in February 1990. These outfits, with or/and without any due oversight from the transitional state, privatised themselves and got involved in intra-state conflict in Angola and Sierra Leone. See Mason and Cilliers 1999, which deals with the privatisation of security in war-torn African societies.

16 The relatively recent, but recognisable trend towards democratisation, more specifically from authoritarian rule to various forms of democracy, habitually focus[es] on the contextual conditions or on the strategic behaviour of political actors, which supposedly led to that change (Ba n & Carrillo 1995a:2, quoting Adam Przeworski in O Donnell, Schmitter & Whitehead 1986:47-63. Ba n and Carrillo are interested in their research in the contextual/reciprocal effect of transitions on the military profession, assuming that a new ethos is needed for the professional soldier in a democracy. So are we in this article.

17 Portugal, a rather poor European power in becoming a colonial power was a bit of an anomaly. Moreover, having been one of the first European countries to colonise, it was virtually the last to leave Africa. See Ciment 1996. It brought about a greater settler population in its colonies

partly due to poverty and over-population in Portugal itself. See Ciment 1996:33-35. Moreover, it dug its heels in to preserve its colonial powers when other European powers were already out of Africa and related to their African subsidiaries/previous colonies as neo-colonial powers. For a useful description of economic dependency and neo-colonialism in the 1960s and 1970s as a result of relationships between the rich North including Europe and the dependent, poorer African states, see the sociologist, A.M.M. Hoogvelt (1981: especially chapters 5 and 6). A later study by a Namibian political economist, C J Keulder (1996), is also relevant in this regard.

18 Ba n & Carrillo 1995a, 1995b, 1995c.

19 See also Maravall and Santamaria in O Donnell et al 1991.

20 See also Liebenberg & Zegeye 1998.

21 See Liebenberg 1998b:24-30, 1998c:42-50.

22 Extensive research work has been done internationally by Huntington, Perlmutter and others. In South Africa early work by Frankel (1980-1984) has to be noted. Important modifications to praetorianism to incorporate the notion of frontier armies in South Africa was made by Andr du Pisani (1988), then at the South African Institute for International Affairs. The work done at the time by Du Pisani reflected innovative thinking and is deserving of much higher merit. Annette Seegers s (University of Cape Town) work stood out however as consistently the most extensive and challenging when the role of the military in politics during the 1980s was at stake.

23 This part builds upon the work done within a South African context on civil-military relations by Williams (1998), Cilliers (1994), Malan (1997), and others.

24 At the basis of *concordance* lies the positive dialogue/interaction (the negotiation of a contract zone) on the role, budgetary allocation, and composition of the military. The partners (stakeholders — if you like) to this negotiated contract zone being the ruling government through their elected representatives, the military and other civil society actors (i.e. opposition parties, academics, religious organisations, practitioners, the independent media and NGOs, etc.).

25 One example being the confusion between responsibilities of military intelligence (MI), security police functions and national intelligence functions. This was already a problem under the Vorster regime, due to weak demarcation of responsibilities. It was compounded when the Civil Co-operation Bureau (CCB) was established under the Botha regime and persisted well into De Klerk s rule. This impacted negatively on accountability and invoked power struggles and politicisation (Khanyile 1997:3-4). One of the recent pointers to the problems left by this is the court case instigated against F.W. de Klerk by Gen Chris Thirion, previous head of MI under the De Klerk government, for an act of unjust dismissal on 19 December 1992 following the Steyn Report (Swart 1999).

26 See also Khanyile (1997:9). Khanyile is apt in his observation that this clause may well become one of the most controversial issues in future legal debates.

27 Open debates, whistle blowing and civil society: For more details on arms procurement, see Liebenberg 1997a. On civil society, see Liebenberg 1997b, 1997c, and Griffith, Butler & Dehn

1995. A comparison between established democracies and their openness towards state transactions (and actions) and the value as well as limitations thereof is to be found in Pimstone 1998a and 1998b.

28 Recent criticisms that the Defence Review Process (DRP) was too costly do not hold. The process cost the taxpayer R1,6 million (not billions as some has had it!). Whether the DRP is effective enough, given its consultative approach, is perhaps debatable. It could still become much more input-orientated and allow greater civil participation. However, citizens are not always very responsive in democracies. Apathy is well known in democracies, be they well-established or so-called emerging ones.

29 See the Independent Complaints Directorate draft report on deaths in police custody (Bruce 1998).

30 Terry Karl (1998) argues: (One should) look at accountability in a broader way — as a thick network of institutions and relationships that involve vertical and horizontal accountability . Important is Karl s observation that accountability includes *both* institutions *and* relationships.

31 For more detail on professionalisation of the military in emerging democracies, see Ba n & Carrillo 1995a, Dix 1994 and Zagorski 1994.

32 See for example suggestions made to the TRC by The Human Rights Watch and various other bodies.

33 The recent excursion of the SANDF into Lesotho provides valuable lessons. The National Peacekeeping Force (NPKF) that was deployed in Thokoza in the East Rand during the 1994 elections was a failure and left South Africans with a dented national pride.

The deployment of mainly SANDF troops and some Botswana military units in an ill defined peacekeeping role after brief SADC Consultation in the mountain kingdom of Lesotho raised tensions, rather than defusing them.

The result was more violence and deaths rather than less in Maseru, the Lesotho capital. Lessons abound: Insufficient SADC consultation, insufficient exploitation of high profile diplomacy (both the SA President and Vice-President were outside the country and no other SADC leader became involved on a personal level), hasty deployment of SANDF troops on a peace-keeping operation without sufficient preparation or training and without a clear mandate contributed to a less than optimum chance for successful intervention. As a result relations between Lesotho and South Africa remain tense — and may well be so for a long time to come (*Pretoria News*, 3 October 1998). Apart from valuable political lessons (such as discovering an absence/lack of well developed protocols on diplomacy in Southern Africa, and the lack of an established policy on peace-keeping), the SANDF s deployment pointed towards a lack of experience in peace-keeping and some levels of unpreparedness when rapid deployment is at stake. This complicates any perceived intervention by South Africa as a needed partner in peace-keeping in Sub-Saharan Africa — or elsewhere. Ironically, while many observers are of the opinion that South Africa is capable of being a valued peace-keeping partner, recent experiences such as 1994 and 1998 seem to decry that such capacity is in place. Notwithstanding, recent surveys have shown that the South African citizenry retains a high regard for their Defence Force (Cilliers et al 1998:177ff).

Prospects for African conflict resolution in the next millennium: South Africa's view

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ABSTRACT

The tragic events in Liberia (1990), Somalia (1992) and Rwanda (1994) evoked a rethinking on the pivotal role assigned to the United Nations and the international community in African conflict resolution. Subsequently, there emerged clarion calls for African solutions to African conflicts, with foreign intervention only playing a complementary role. This unfolding of events put a democratic South Africa, a former pariah state, in a good stead to take this initiative in sub-Saharan Africa.

So far, South Africa s circumspect role has elicited mixed reactions from concerned parties within and outside her territorial boundaries. In this paper, the nature of South Africa s involvement in subsequent conflicts is discussed. The main objective is to highlight factors which have moulded South Africa s intervention, and their impact on her perceptions about prospects for future African initiatives in the twenty-first century.

1. INTRODUCTION

The peaceful end of the Cold War changed the world in different and profound ways (See, for example Boutros-Ghali 1992:5-7). Bipolarity, for example, gave way to unipolarity. However, this post-Cold War scenario is likely to be ephemeral as the political clout of the United States (US) continues to be challenged. This is precisely because the circumstances in which the military strength of the US remains effective continue to diminish gradually. US hegemony continues to be challenged as powers like Germany, Japan, and China gradually ascend in economic power relative to that of the US (Kegley & Wittkopf 1995:104-106).

In addition, the end of the Cold war adversely affected third world countries as they became more marginalised by the West (Bush & Szeftel 1995:291-293; Williams 1997:134; Neethling 1998:27). In the light of the changes brought by the end of the Cold War, economic considerations superseded political considerations. This then changed the focus of the West to the developing countries in Latin America and South East Asia. The first world countries were also pre-occupied with enticing former communist countries in Eastern Europe and with containing potential conflicts in the former Soviet Union.

In his gloomy assessment of Africa s position, Deng had this to say:

> Africans are increasingly being told that, given the resources in the world, shrinking as they are, and the tendency of withdrawal and isolationism on the part of the wealthier industrialised countries of the West, they will have to rely on themselves primarily and whatever help they can expect from the outside will be minimal, targeted at specific situations. This limited help will naturally be motivated by the values of those who are coming to assist. Accordingly, the degree to which a country lives up to the values of human rights, humanitarianism, democracy and the market economy will determine the degree to which it will receive support from outside.
>
> (Deng 1996: 23)

In the light of these changes, the Organisation of African Unity (OAU) adopted the Declaration of Fundamental Changes, which moves from the premise that Africa has to assume responsibility for its own affairs. As a follow up to this, in Cairo in 1993, the OAU adopted the Mechanism for Conflict Prevention, Management and Resolution (MCPMR) (Jan 1997:13).

Earlier on, in 1992, the United Nations (UN) decided to review its strategy for conflict resolution and peacekeeping. Non-payment of contributions coupled with the reluctance of Western countries to commit their military personnel in hazardous peacekeeping operations (in Africa) also made it imperative for the UN to review its strategy (Boutros-Ghali 1992:28,41). Boutros-Ghali s *Agenda for Peace*, the policy document on UN peacekeeping, came as a direct response to these challenges. This document, inter alia, called for the partial delegation of peace-keeping duties to regional organisations (Boutros-Ghali 1992:chap 7). However, the events in Somalia and Rwanda showed that many of the recommendations of the UN s *Agenda for Peace* are, in fact, implausible.

In the light of these developments, a democratic South Africa as a dominant member state within the Southern African Development Community (SADC) seemed to be in good stead to be in the forefront of renewed moves towards bringing African solutions to African conflicts (Jan 1997:13; McGowan & Ahwireng-Obeng 1998:1-3). However, this proved not to be an easy task at all, for South Africa carried with her a considerable baggage of the past (See, amongst others, Landsberg 1996:1670-1671; Gwexe 1996:29-32).

To mark a clean break with the past, South Africa, among other things, has had to transform herself from a pariah state into a first among the equals in Southern Africa. In the process, South Africa adopted a remarkably ambivalent foreign policy towards the region and indeed the rest of the continent.[2]

This paper will start off with a brief review of recent attempts — both foreign and African — in conflict resolution in this continent, to be followed with an overview of South Africa s endeavours. It will be argued that South Africa s conception of African conflict resolution falls short of meeting the heightened expectations in the continent as a whole; that South Africa s position is influenced by the magnitude of daunting domestic challenges which will, for some foreseeable future, continue to drain much of her meagre resources; and that in pursuit of legitimate interests abroad, South Africa will nevertheless be impelled to fulfil her continental obligations.

This paper will then conclude that without substantial financial backing from the West, particularly the US, South Africa will remain pessimistic over the prospects for African conflict resolution in the next millennium.

2. CONFLICT RESOLUTION IN AFRICA IN THE 1990S: NEW PATTERNS, RISING DANGERS?

The thaw of the Cold War in 1989 and the emergence of the conflicts in Liberia, Somalia and Rwanda evoked calls for a re-assessment of the orthodox view that a resolution of African conflicts relies on excessive international intervention.[3] Such intervention was said to come from the UN, the US and the former colonial powers. However, profound global changes engendered by the end of the Cold War brought crisis in this view to the fore.

Since the end of the Cold War, three separate events in Africa stood out to expose the major flaws of this view. The first was failure of the international community in 1990 to intervene in resolving the civil war in Liberia. When it became abundantly clear to West African states that the anticipated foreign intervention was not forthcoming, drastic steps were taken to initiate regional moves to resolve the conflict. Given the urgency of the situation, it goes without saying that such hastily arranged moves were fraught with problems.

Another event was the breakout of an ethnic conflict, plunging Somalia into a bloody civil war in 1992. Following a scathing criticism for callousness while Samuel Doe s egregious regime embarked on a systematic slaughter of civilians in Liberia, the international community under the auspices of the UN and the US wasted no time in intervening in Somalia. This time around, their intervention was labelled by commentators as excessive. In the light of this, it is not surprising that the operation in Somalia was fraught with problems as well.

The third, and the most tragic, event was a notably minimal intervention of the international community in a civil war between the ethnic Hutus and Tutsis in Rwanda earlier on in 1994. As will be shown hereunder, each of the subsequent peacekeeping missions had its own fair share of problems.

The Liberian debacle

Events that led to the recent conflict in Liberia are well documented elsewhere[4] and will, in fact, not be repeated here. However, for the purposes of this paper, a synopsis of the main events will be made hereunder.

The civil war in Liberia started on the 24th of December, 1989, when Charles Taylor s group, the National Patriotic Front of Liberia (NPFL), invaded Liberia.

That invasion was a direct expression of the people s disillusionment with the despotic regime of Samuel Doe, which ascended into power under dubious circumstances in 1980. Since then, the paranoia of Doe s regime manifested itself in waves of acts of brutality which this regime was prone to unleash against its imagined or real enemies, particularly civilians from the Gio and Mano ethnic groups. Amongst the most gruesome acts was the 1985 Monrovia beach massacre of the masterminds of the abortive coup in 1985, led by Thomas Quiwonkpa (Sesay 1996:36).

In his analysis of the causes of this civil war, Sesay (1996:36-37) did not hesitate to factor in tribalism, introduced by Doe s regime. For example, its bureaucracy, army, security forces and the public services were teeming with members of his ethnic group, the Krahn. It is not surprising that Quiwonkpa, the mastermind of the failed coup in 1985, was from a rival ethnic group, the Gio, from the Nimba county. Other ethnic groups were the Mandigos and the Mano. All these groups were later united in their cause to avenge years of maltreatment by Doe s regime.[5]

Given the number of failed coup attempts by the NPFL in the 1980s and the ruthless manner in which Doe s regime dealt with its opposition, the 1989 invasion was taken flippantly for a start. However, it was this attack which ignited the bloodiest civil war ever in Liberia.

In the light of this carnage, the failure of the international community to intervene in Liberia came as a great surprise. Sesay corroborated this view:

> The failure of the US to intervene came as a disappointment to many, but left some in the hope that the rest of the international community would do something to stop the carnage. In particular, people pinned hopes on the United Nations which, in the aftermath of the end of the cold war superpower rivalry, appeared to have reinvented itself and seemed competent to handle issues that threatened international peace and security. However, almost three years after the fighting and despite calls from some quarters for a direct intervention, the UN was conspicuously absent from the Liberian scene.
>
> (Sesay, 1996:40-41)

As alluded to in the foregoing quotation, a bombshell was dropped by the US when she stressed that the civil war in Liberia was purely an internal affair and did not warrant a direct US invasion. This was unexpected, given the strategic importance of Liberia, and the special relationships between the two during the 1980s (Sesay, 1996:40; Williams, 1997:136).

In the light of this gross irresponsibility, the Economic Community of West African States (ECOWAS) decided to form a monitoring group — ECOMOG. Maj Gen Ishola Williams gave us a broad picture of how the prevalent atmosphere of desperation led to the formation of ECOMOG:

> The situation required an urgent response, but the Liberian issue was ignored. The UN was engrossed in addressing the Gulf war. The United States had other priorities. West Africa was pushed to take the initiative. Immediately questions were asked whether ECOWAS was justified in creating ECOMOG, the ECOWAS monitoring and observation group, and in intervening in Liberia.
>
> (Williams 1996:80)

ECOMOG was a brain-child of Nigeria. Other participating countries were Anglophone countries like Ghana, Sierra Leone, Gambia and Guinea. When ECOMOG was set up in August 1990, it was hoped that its mission in Liberia would last for twelve months. Within that period ECOMOG intended to have opened routes for much needed humanitarian aid; to have established a buffer zone around the capital Monrovia to enable the discussion of a cease-fire; and to have taken over security duties while an interim government was being established to facilitate national reconciliation and oversee a democratic return to normal life (Williams 1996:80). To this end, a first contingent of 3 500 thousand troops from the five ECOWAS countries was deployed in Liberia on the 22nd of August 1990.[6]

ECOMOG s case was unique in the sense that it represented the only example in the world of a regionally-based peacekeeping force sent on a peacekeeping mission within the same region. However, this turned out to be its Achilles heel. For one thing, from its inception ECOMOG had to grapple with a legitimacy problem. This legitimacy crisis was precipitated by the fact that Charles Taylor, who controlled 90% of the country, objected to ECOMOG s intervention. Taylor stuck to his word as he attacked the peace keepers. This then compelled ECOMOG to change its modus operandi from peacekeeping to peace-enforcement. This situation was exacerbated when Samuel Doe, on his way to ECOMOG headquarters, was captured, tortured, and killed by Prince Johnson — a leader of the Independent National Patriotic Front of Liberia (INPFL) faction that defected from the NPFL in May 1990. ECOMOG s failure to prevent this incident of the 10th of September, 1990, led to the collapse of a temporary cease-fire brokered by ECOWAS. In the aftermath of this, Taylor then threatened to seize the capital Monrovia at all costs. ECOMOG was then compelled to use force to stop him (Barrett 1993:638-640).

Generally, the limited success of ECOMOG was evidenced by the fact that in 1994, 150 000 people were slain and 750 000 more were refugees in neighbouring states and over a million were displaced internally (Sesay, 1996:44). Another shred of evidence is the fact that out of thirteen brokered cease-fires, none of them was adhered to for a considerable period of time.

This bleak assessment can be attributed to a regional and international dimension of the Liberian conflict. Notable here was the external financial and military support rendered to the warring factions. For example, according to Sesay, there is an overwhelming evidence to the fact that countries like C te d Ivoire, Libya, and Burkina Faso rendered the required support to Charles Taylor. During the first year or so of the conflict, C te d Ivoire went to the extent of blocking any discussion of the Liberian crisis by the UN Security Council. This was done so to give Taylor ample time to ascend into power and ensure a stable neighbour. Taylor s realisation of this state of affairs petrified him; he remained intransigent and strongly objected to ECOMOG intervention. Taylor s uncompromising stance can be linked to a perception within NPFL circles that by calling for a peaceful settlement, ECOMOG intended to turn NPFL away from the imminent victory. This factor inhibited the success of the ECOMOG mission in Liberia. This assertion affirms Masson and Fett s analysis (1996:549) of the probability of victory, which posits that:

> Any factor that gives either G or R a substantially greater probability of victory than its rival decreases the likelihood of a negotiated settlement because the dominant party will be less interested in a settlement if victory appears inevitable.[7]

The operation in Liberia brought to the fore new patterns and rising dangers of peacekeeping in the 1990s: up to September 1992, 61 ECOMOG soldiers, made up of 36 Nigerians, 9 Ghanaians, 12 Guineans, 2 Sierra Leoneans and 2 Gambians, had been killed in action. Thirty seven others — 22 Nigerians, 1 Ghanaian, 12 Guineans and 2 Sierra Leoneans — were killed just before September 1992. In addition, two Guineans and one Sierra Leonean were also missing in action during this period.[8]

Case study: Somalia

The reluctance of the UN to intervene in Liberia, coupled with its alacrity to intervene in the Gulf, raised questions about the impartiality of the UN. Africa s feeling of having been marooned was further accentuated when the UN decided to get involved in Yugoslavia in 1992. So when an internecine warfare plunged Somalia

into a stateless condition in 1992,[9] the impartiality of the UN was subjected to an acid test. This time around there was no way out for the UN: it could not risk being accused of upholding double standards. For this specific reason, the UN then decided to intervene in Somalia.[10] Kapundu (1996:58) gives us the graphic details of the circumstances which led to the ultimate UN intervention in Somalia (UNOSOM:UN Organisation in Somalia). He said:

> The United Nations did not go into Somalia because it wanted to. There was a great deal of hesitation. The Security Council had taken a decision to go into Yugoslavia. The Security Council had refused, or had been blocked, from taking any decision on Liberia and the OAU and its own subsidiary organisations had to go into Liberia alone, with limited resources and so people began to ask why was the United Nations prepared to go into Yugoslavia and not Somalia. The international media also portrayed horrific incidents coming from Somalia and so the United Nations decided to see whether it could do something in Somalia.

So when UN/US intervention in Somalia commenced December 1992, it had lofty ideas of saving millions of Somalis from starvation and restoring peace and stability. However, this operation enjoyed only a limited success as it was punctuated by the killings of twenty-five Pakistani peacekeepers on the 6th of June, 1996, and eighteen US Army Rangers in October 1993. In the aftermath of these killings the US unilaterally decided to withdraw its military personnel from Somalia with effect from March 1995. The three year operation in Somalia also highlighted the rising dangers of peacekeeping operations in the 1990s. Between 1992 and 1995, 130 peacekeepers died and this was the highest fatality rate in the history of UN peacekeeping (Woodhouse 1996:129). UNOSOM II never achieved its objectives[11] and had to be ignominiously called off in 1995.

Case study: Rwanda

To the UN, the foregoing UN operation was salutary in the narrow sense that when the civil war broke out in Rwanda, UN intervention was reduced to a bare minimum. At its peak, the UN force serving with UNAMIR (UN Assistance Mission for Rwanda) stood at 5 500.[12] This small number incapacitated the UN as UNAMIR could not be in a position to prevent the genocide of the Tutsis and moderate Hutus, which was at its peak during the first few days of the fighting. For example, between the 28th and the 29th of April, 1994, 250 000 refugees flooded into Tanzania. Later on, others flooded into the neighbouring Zaire, precipitating one of

the worst humanitarian crises ever handled by the UNHCR (UN High Commissioner for Refugees).

UNAMIR proved to be a dismal failure: it could not prevent the genocide stated above, or ensure the distribution of humanitarian aid to the refugee camps like Goma in Eastern Zaire, nor did it solicit the support of the Rwandan Patriotic Front which, after assuming power, equally criticised UNAMIR for failing to prevent the genocide. When UNAMIR was withdrawn in March 1996, the vast majority of Rwandan refugees were still displaced.

A blame for the tragic situation can be squarely put at the door of the UN which, because of the Somali fatigue, was not prepared to intervene. Tom Woodhouse (1996:129-130) felicitously put this when he said:

> While in Somalia the UN came under criticism for intervening too much militarily, in Rwanda it came under attack for not intervening enough. In April 1994, following the killing of 10 Belgian soldiers serving with UNAMIR, the force was reduced to a small staff of just 270 when the genocide of Tutsis and moderate Hutus was taking place.

UNAMIR indicated that the UN did not do a proper analysis of the situation on the ground. After failing to prevent the genocide in April 1994 in which up to a million people were shot, hacked or burned to death, it equally failed to deal with the humanitarian crisis that ensued. Conditions in the refugee camps in Kigali and Goma deteriorated because, amongst other things, there was no clear co-operation between the UN agencies and the NGOs.[13]

As alluded to earlier on, the three operations brought to the fore the changing patterns of conflict resolution endeavours in Africa. For one, during this period, more than ever, the intervening parties were forced to rely on direct military intervention, since diplomacy and economic sanctions, as it were, became more and more inappropriate for these deep-rooted conflicts.

Also, these emerging patterns subjected the pacifiers to a great strain. This was due to a simple reason that unlike diplomacy, direct military intervention required the intervening parties to commit a considerable share of their meagre resources to the peacekeeping operations. As a result, to mitigate the effects of the high costs that are invariably incurred in operations of this nature, the intervening parties, as was shown in Liberia and Somalia, have been tempted to change their modus operandi

from peacekeeping to peace enforcement.[14] This can be attributed to a firm belief that doing so, as opposed to cajoling the belligerent factions to reconcile with one another, takes a relatively short period and saves a considerable amount of resources.

Furthermore, new patterns of conflict resolution endeavours in Africa have been brought about by a tendency on the part of the pacifiers to vacillate between multilateral and unilateral interventions and to treat these as analytically distinct forms of intervention. The three case studies brought this fact to the fore. For example, the situation in Liberia evoked multilateral (ECOMOG) intervention, and that in Somalia unilateral (US) intervention. The situation in Rwanda was rather bizarre, oscillating between the two. Initially, there was a significant Belgian intervention. However, after the withdrawal of Belgium, UNAMIR was perhaps too weak an operation to warrant classification as a multilateral operation under the aegis of the UN.

In a nutshell, the changing patterns of conflict resolution endeavours in Africa have actually made it imperative for us to factor-in a wide range of factors in our analysis of the prospects for African conflict resolution in the next millennium. These include, inter alia, the impact of (conflicting) values on the successes of mediation in intra-state conflicts; equipping military personnel with specific skills to enable them to optimally play a peacekeeping role; issuing a clear mandate to the peacekeepers; as well as acknowledging the significant role of a civil society in the effective implementation of post-conflict peace-building.[15]

At this juncture, it needs to be reiterated that value differences, for example, have made ideological conflicts in general and ethnic conflicts in particular not to be amenable to mediation.[16] The three cases above have, in varying degrees, shown this. On the one hand, ethnic conflicts in Rwanda (and Burundi) have been simmering for a considerable period of time and up to now, a lasting solution to them is not yet in sight.[17] On the other, ideological conflicts (like the one in Angola) invariably reduce the successes of mediation to a bare minimum.

3. RE-EVALUATING CONFLICT RESOLUTION IN AFRICA: SOUTH AFRICA S PERCEPTIONS?

These afore-mentioned tragic events highlighted a dire need for the OAU to be proactive in resolving African conflicts. In 1994, following the adoption of MCPMR in Egypt in 1993, this idea was gradually beginning to crystallise into something more concrete. Since the adoption of the MCPMR, the OAU has helped

in diffusing potentially explosive situations, as in Nigeria for example; in dispatching military observers to Burundi; in observing the elections in Congo, Togo, Gabon, amongst other places; and in ensuring that the African states made their contributions to the UN s peacekeeping operation at the peak of the genocide in Rwanda (Jan 1997:14). In addition, pre-eminent individuals within the OAU, like its Secretary-General, Salim Ahmed Salim, began to preach that an effective implementation of the MCPMR depended mainly on the co-operation of all member states. Particular reference was made to the significant role of countries like South Africa in the south and Egypt in the north. The rationale is that their industrial development, presumably, puts them in a much better position to act as logistic centres for OAU peacekeeping operations.

Furthermore, scholars like Ali Mazrui argued that a panacea to African conflicts would be a formation of an African Security Council composed of five pivotal regional states (Egypt, Ethiopia, Nigeria, South Africa and Zaire) which would, presumably, have the required capacity for such interventions (Woodhouse 1996:135).

With all this having been said, where does South Africa stand in this regard?

Here it needs to be unequivocally stated that South Africa is a unique country expected to play a pivotal role in a vastly changing world. South Africa s uniqueness, according to Sina Odugbeni (1995:701-703),[18] can be attributed to a number of factors. One, apartheid in South Africa was regarded as a crime against humanity and evoked struggles world wide. For this specific reason, the demise of apartheid drew world-wide attention. Two, the peaceful elections in 1994 were regarded as miraculous by the foreign observers who flocked into the country, anticipating that the election would be marred by violence and would not be free and fair. Three, there was a perception that the struggle against apartheid in South Africa was a Pan-African one. For this reason, Africans in the Diaspora could not regard themselves as free while their brothers were still languishing under the apartheid yoke in South Africa. Given the euphoria that trailed in the wake of South Africa s liberation, there were heightened expectations that South Africa would help Africa overcome her challenges — hunger, civil strife and democratisation.

Generally, South Africa seemed to be in good stead to rise to the occasion. South Africa had a strong economical clout as her GNP equalled 36% of the combined GNPs of all countries in Sub-Saharan Africa. In the political sphere, South Africa acted as a role model as her peaceful transition gave impetus to democratisation in Southern Africa (Odugbeni 1994:701-703).

Pretoria s dilemma

Since her liberation in April 1994, South Africa has had to transform herself from a pariah state into an equal partner (in Southern Africa). This then wrought enormous changes in South Africa s foreign policy. Noticeable here is the cornerstone of South Africa s foreign policy: the protection and promotion of human rights and democracy. South Africa, as result, is more vocal on issues like banning the proliferation of nuclear weapons as well as the use of limpet mines. Environmental issues also seem to be topping the shopping list of South Africa s foreign policy.

In the light of these changes, a democratic South Africa adopted an ambivalent policy towards the region and indeed the rest of the continent (Hanekom 1997:7). This was clearly reflected in the manner in which South Africa intervened in subsequent conflicts right across Africa. South Africa s circumspect intervention, as dictated to by her evolving foreign policy, evoked mixed reactions not only within the country, but on the continent as a whole. Chris Landsberg corroborated this view. He said:

> Some critics of the ANC government have been catching on to what they believe is South Africa s retreat from peacemaking on the African continent. Others will go as far as to complain that Pretoria s general involvement in Africa s affairs is not as nearly as pronounced as many in the continent would wish or had expected, following the demise of apartheid.
>
> (Landsberg 1996:1670)

As will be shown hereunder, there is an overwhelming evidence on how South Africa s evolving foreign policy subjected her to a great strain with regard to her conflict resolution endeavours in Africa. Perhaps one tenet of South Africa s foreign policy is to stress diplomacy rather than military intervention. The architects of South Africa s evolving foreign policy seem to be having a strong belief in the maxim that diplomacy makes a greater contribution in African conflict resolution than more ambitious but sometimes less successful alternatives — as was revealed elsewhere in Africa (Landsberg 1996:1670).

This was evidenced by South s Africa use of quiet diplomacy when there was a royal coup in Lesotho in 1994. South Africa wasted no time in uniting with other erstwhile Frontline States, particularly Botswana and Zimbabwe, calling for the immediate reversal of the coup. Through diplomacy, South Africa, together with her partners in the region, managed to contain a potentially explosive situation as the democratically elected government of Ntsu Mokhetle was reinstated. South Africa s

manner of intervention here was reinforced by the need on the part of South Africa to transform herself from a pariah state in Southern Africa. As a result South Africa places a high premium on multilateral response. For this reason, South Africa perceives the SADC as an institutional framework for this.

In addition to quiet diplomacy, South Africa s foreign policy establishment appears to have been overwhelmed by President Mandela s personalising of South Africa s foreign relations (Onadipe 1996:1672-1673). This factor, as was evidenced in November 1995, has a direct bearing on the manner in which South Africa intervenes in conflict situations in Africa. South Africa s disastrous Nigeria policy vindicates this claim.

Perhaps, a brief historical background to the situation in Nigeria will make this point more clear. South Africa s involvement in Nigeria started long before the execution of the Ogoni Nine. President Mandela devoted a lot of his time in diffusing the crisis in Nigeria, following Gen Babangida s annulment of the 1993 elections. The annulment precipitated widespread civil unrest, leading to the dismissal of Babangida and the ascension of a new military regime under Sani Abacha, following the demise of a civilian government which Babangida hastily installed as he made his quick exit. The new military regime detained Chief Moshood Abiola, widely believed to have won the 1993 elections. This arrest took place after Chief Abiola declared himself as the president of Nigeria in June 1994.

South Africa initially responded when President Mandela dispatched Archbishop Desmond Tutu to Nigeria. Tutu s mission was to initiate a dialogue with the Abacha regime and to negotiate for the release of Chief Abiola. Abacha and his rogues were intransigent and Tutu s mission failed. This became abundantly clear when a tribunal tried, and subsequently sentenced to death, the former head of state, Gen Obasanjo, and thirty-nine others for plotting a coup. This act evoked further pleas for clemency.

This time, President Mandela sent the Deputy President Thabo Mbeki, who had a cordial relationship with that country when he acted as the ANC s representative in Lagos during the 1970s. This mission was not successful either: It was followed by the trial of the Ogoni Nine. This time around, the military tribunal sentenced Ken Saro Wiwa, an internationally acclaimed writer and an environmental activist, together with his eight compatriots to death amid clarion calls for clemency.

At this point, President Mandela intervened personally. He telephonically contacted

the highest authorities of the Abacha government in Abuja. This phenomenon continued until President Mandela s departure for the Commonwealth summit in New Zealand. Throughout, President Mandela remained optimistic and this prompted him to adopt a more soft approach towards the egregious Abacha regime. This, however, turned out to be his Achilles heel: the Ogoni Nine were hanged amidst all those calls for clemency. This clearly indicated that, contrary to majority expectations, South Africa s mission in Nigeria had, in fact, failed. All the frantic attempts that South Africa made afterwards could not salvage the situation.[19]

Furthermore, South Africa s evolving foreign policy seems to indicate that South Africa prefers to engage in high-risk peacekeeping operations only under the auspices of the UN and the OAU. For this specific reason, a democratic South Africa has been careful not to become involved in peacekeeping efforts beyond her immediate region. Thus the South African Government refused to send peacekeeping forces to Rwanda in 1994. On the contrary, South Africa only offered humanitarian aid to Rwanda, and logistical support to Mozambique during the November 1994 elections.

The Rwandan civil war could have presented to South Africa a golden opportunity to prove her peacekeeping capabilities. However, South Africa let it slip away. Why? One (and perhaps the only plausible) explanation is that South Africa has no experience in international peacekeeping. In the situations in Angola, Mozambique, Rwanda and Burundi, South Africa did not play this role; other players — the UN, France and Belgium — did. Even in Southern Africa, other countries like Zimbabwe and Zambia seem to be better off in this regard, compared to South Africa (See Kapoma 1996:1-4).

Another tenet of South Africa s foreign policy is neutrality. According to South Africa s version of conflict resolution, this tenet entails talking to all parties in the conflict. This is in line with a democratic South Africa s bottom line: respect of human rights and provision of humanitarian assistance and logistical support to complement international peacekeeping efforts. South Africa s belief in neutrality became clear, when South Africa, in an attempt to diffuse the situation in Angola, held talks with UNITA[20] in Umtata (*Daily Dispatch* 1997:2). So far, South Africa s attempts have only been moderate as there are allegations that UNITA is once again mobilising its forces (See Gordon 1997:24; Gordon 1998:4; Gordon & Barrell 1998:4). Similarly, in Sudan South Africa has so far managed to talk to the leaders of the major stake-holders in the Sudanese conflict.[21]

Perhaps the 1997 conflict in Zaire (now known as the Democratic Republic of Congo) highlighted the dilemma of South Africa s foreign policy: if South Africa establishes herself as a centrifugal force in Southern Africa, she would be accused of harbouring hegemonic aspirations; if she adopted a moderate, isolationist approach, she would be criticised for callousness.

Given this dilemma, the Nigerian fiasco and moderate success in Angola, South Africa s role as peacemaker in Zaire indicated that South Africa s search for a foreign policy victory still goes on. However, the Zairean endeavour did not pay off either. Evidence to prove this is overwhelming.

South Africa s diplomatic shuffle in Zaire started in March, 1997, when South Africa hosted Zairean envoy Honore Ngbanda and opposition leader Laurent Kabila. In these secret preliminary talks four items were discussed: the status of the talks and the weight of the resolutions taken; a cease-fire between warring factions in Zaire; the combination of a South African-led initiative with the OAU and UN peace efforts; and the role of external forces in finding a solution (Hartley 1997a:27). The subsequent talks arranged by South Africa could not reconcile the warring factions. In the end, a military solution prevailed.

A chronology of the events in Zaire clearly indicated that South Africa s intervention did not differ markedly from the previous cases. For one thing, there were still vestiges of the personalisation of the foreign policy establishment by President Nelson Mandela. For example, in his attempt to maintain sound personal relations with (the late) Mobutu Sese Seko, President Mandela, in a manner reminiscent of Nigeria, has on more than one occasion preferred to rely on direct telephone conversation with him (Mobutu). One such incident took place after the preliminary talks in April (Hartley 1997b:4).

Also, as was the case in Rwanda, South Africa remained reluctant to commit her troops in a peacekeeping initiative. For example, the deputy minister of Foreign Affairs, Aziz Pahad, was quoted in April 1997 as having said that South Africa remained committed to involvement in an international peacekeeping initiative. However, that commitment went down with the caveat that such initiative would not necessarily involve troops (Hartley 1997b:4). This statement affirmed South Africa s foreign policy tenet that unless proximity dictates otherwise, South Africa will commit her troops in peacekeeping operations only under the aegis of the UN and OAU.

A sublime feature of South Africa s involvement in Zaire was the working in tandem with the US. When the crisis in Zaire was rife, the vice president, Thabo Mbeki, was said to have been in close contact with his US counterpart Al Gore.[22] However, even this strategy does not seem to have salvaged South Africa from her foreign policy dilemma (See Mamdani 1997:10).

4. CONCLUSION

A lasting solution to Africa s conflicts now, it seems, has to come from within Africa herself. This was clearly indicated by ECOMOG in Liberia. Although ECOMOG was not a resounding success, many Liberians today are still indebted to it. Was it not for ECOMOG s intervention, many of them would not be alive today.

However, because conflict resolution and peacekeeping is a costly exercise, continued support from the UN, US and other Western, particularly the Nordic, countries will be necessary to facilitate African initiatives. The international community can, for example, adequately provide the much needed financial and logistical support and expertise.

Perhaps the events in Somalia and Rwanda have taught us a lesson in this regard: peacekeeping or conflict resolution should not be a monopoly of the military, but should involve many facets of society, including politicians, civil society, and humanitarian organisations. In addition, African conflict resolution needs to involve regional and sub-regional organisations and powers.

The fact that this harsh reality is beginning to dawn on the minds of major donor countries and agencies, bodes well for African conflict resolution in the next millennium. The UN, for example, has come up with a special initiative on Africa. In addition, the fact that the Secretary-General of the UN, Kofi Annan, comes from Africa, augurs well for African future initiatives (See, for example, Annan 1997:31-33). Furthermore, the US, through the 1994 African Conflict Resolution Act of 1994, has authorised $1,5 billion between 1995 and 1998. In line with this, the US is further proposing the setting up of a 10 000 strong Africa Crisis Reaction Force.

Despite all this, the ultimate responsibility is still on African regional organisations and powers. As shown above, the OAU has already made some remarkable improvements in this regard and these will not be reiterated here. Rather, a thorny

question, which the remainder of this paper will attempt to respond to, is: Where does South Africa stand on this issue?

Lest the impression created so far be that South Africa cannot legitimately pursue her foreign policy goals if she does so at the expense of African conflict resolution initiatives, let me quickly point out that this is obviously not the case. South Africa, like any other state actors in the international system, needs to vigorously pursue her foreign policy goals here and abroad. There is, for example, nothing sinister with South Africa vying for the much coveted position of a permanent African representative in the UN Security Council. Rather, what is the real issue here is that there are conspicuous discrepancies between her foreign policy goals and the manner in which they are pursued. As the shopping list of her foreign policy indicates, South Africa is particularly concerned with attracting foreign investment and establishing more trading partners. Next to these are the promotion of human rights and the prevention of environmental degradation. Africa seems to be at the bottom of the shopping list of South Africa s foreign policy. The ad hoc bases on which South Africa attends to the problems that keep on nagging this continent leave one really wondering as to whether South Africa does have a policy towards Africa at all (See Hanekom 1997:7; Barrell 1998:6). The haphazard manner in which South Africa has responded to the renewed conflicts in Lesotho[23] and in the Democratic Republic of Congo (DRC)[24] has once again brought this critical question to the fore.

What are the implications of this state of affairs on African conflict resolution and South Africa s perceptions thereof? As pointed out earlier on, South Africa has not been in a position, for example, to successfully reconcile economic objectives, on the one hand, and the protection of fundamental human rights as well the promotion of democracy on the other. There are a number of cases that attest to this assertion. The Nigerian debacle is one example. The other case — outside Africa — is that of Indonesia. Noticeable here is the fact that because of ambitions to strengthen trade links with Indonesia, South Africa (much to the dislike of East Timor) failed to adopt a tough stance against that country s gross violation of human rights in East Timor.

What South Africa can (and should) do is to vigorously pursue her foreign policy, particularly when the values avowedly stated in her foreign policy dictate so. In addition, South Africa needs to come up with a holistic approach vis- -vis *ad hoc* bases when dealing with this continent. Failure to do so can result in South Africa not only ignominiously forfeiting her foreign policy goals, but also failing to meet (reasonably) heightened expectations in the rest of the continent.

Unfortunately, South Africa seems to be brushing this fact aside. South Africa s policy (like any other policy) remains strongly moulded by her daunting domestic challenges.[25] Therefore, South Africa s prevalent view that she is not yet ready to lead the formation of the Africa Crisis Reaction Force as suggested by the US, I believe, does not come as a surprise. But, the same view is particularly disquieting and disconcerting to the critics of South Africa, given the fact that the Africa Crisis Reaction Force would have presented her with a golden opportunity to reconnect with the rest of the continent.

It is perhaps due to these domestic challenges that South Africa has given the US idea of spearheading the formation of an African Crisis Reaction Force a wide berth.[26] For South Africa, anything beyond the level of involvement that she has displayed so far, will have to involve the UN and the US — financially or otherwise. This perception, which undoubtedly will have a direct impact on the prospects for African conflict resolution, is likely to last well into the next millennium.

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NOTES

1 Mr Gwexe is a lecturer in the Department of Political Studies at the University of Transkei, Umtata, South Africa.

2 For a detailed analysis of South Africa s evolving Foreign Policy, see, inter alia, Van Aardt 1996:107-119; Breytenbach 1997:274-277.

3 Unless stated otherwise, in this paper the term conflict will be used to refer to ethnic, religious, regional and other forms of conflict (Regan 1996:338), and the term conflict resolution will be broadly used to refer to preventive diplomacy, peace-keeping, peace-making, as well as post-conflict peace-building (Boutros-Ghali 1992:11-12).

4 See, amongst others, *West Africa*, No. 3911 (31 August-6 September, 1992):1470-1473; No. 3918 (19-25 October, 1992):1764-1766; No. 3936 (1-7 March, 1993):325-327; No. 3937 (8-14 March, 1993):369; No. 3957 (26 July-1 August, 1993):1292-1296; No. 3943 (19-25 April, 1993):638; No. 3984 (7-13 February, 1994):206-210; No. 4012 (22-28 August, 1994):1462-1465; No. 4098 (6-12 May, 1996):697-700; No. 4113 (19-25 August, 1996):1306-1311; No. 4124 (11-17 November, 1996):1750-1755.

5 *West Africa,* No. 3911 (31 August-6 September, 1992):1471.

6 Later on this number increased up to 10 000 and 12 000 troops. Nigeria was a major contributor in this regard. See Barrett 1993:638-640.

7 In this model, G represents an incumbent government, and R a rebel organisation. If we need to expound on this model, we can possibly think of the prevailing conflict situation in Angola and assert that G stands for the MPLA government, and R for the UNITA rebel movement. For detailed information on this model, see Mason & Fett 1996:546-550.

8 *West Africa*, No. 3911 (31 August-6 September, 1992):1471.

9 For a brief historical background of the conflict in Somalia and the initial UN response, see Omaar 1992:1382-1383.

10 *West Africa*, No. 3926 (14-20 December, 1992):2140-2141.

11 According to Woodhouse (1996:123), UNOSOM II had lofty goals of assisting the Somali people in rebuilding their shattered economy and social and political life, re-establishing the country s constitutional structure, achieving national reconciliation, and creating a Somali state based on democratic governance.

12 This small number stood in sharp contrast to the 500 000 the West deployed to evict Iraq from Kuwait in 1990, and the 55 000 men the West deployed in Bosnia (Lockwood 1995:15).

13 See *Africa Report*, November-December 1994:17-21.

14 However, this invariably comes at an exorbitant price as the impartiality of the peacekeepers is often clouded by the tendency of slipping through the Grey Zone . (For more information on this, see amongst others, Cilliers & Malan 1996:342; Neethling 1997:210).

15 Boutros-Ghali 1992:32-34 puts the whole notion of post-conflict peace-building in a proper perspective.

16 For more information on this view, see Regan 1996:347.

17 The chronology of events in these two countries of the Great Lakes region puts this in a proper perspective. In addition, the recent designs for peace in these two countries do not seem to be bringing a lasting solution to these ongoing conflicts. For more information in this regard, see, inter alia, Griggs 1997:4,18-25,28; *Sunday Times*, 10 August 1998:13.

18 South Africa s unique position in a vastly changing world is well documented elsewhere and will not be repeated here. Nevertheless, Sina Odugbeni s article is of particular interest in this regard as it sheds some light on how the rest of the continent perceived a democratic South Africa which emerged after the April 1994 elections. For a detailed analysis of these perceptions, see Odugbeni 1995:701-703.

19 Among other things, South Africa used her influence in the Commonwealth to call for the two-year suspension of Nigeria from this grouping. In addition, South Africa was the only country to insist on the imposition of sanctions on Nigeria. South Africa further withdrew her High Commissioner from Lagos in protest, along with some other countries. (For more information on this and subsequent attempts, see Onadipe 1996:1671-1673; Jason 1997:27; and also Woollacott 1997:15.)

20 Uni o Nacional para a Independ ncia Total de Angola.

21 Here Richard Cornwell looks at factors militating against President Nelson Mandela s recent attempts at negotiating a peaceful settlement in Sudan. For more information in this regard, see Cornwell 1997:30.

22 This state of affairs might be attributed to the fact that the US accords South Africa a special status. For example, since November 1994, the two countries established a bilateral commission. South Africa is the only country, apart from Russia, to have established a commission of this nature with the US. See Bully 1994:2027-2029; Hartley 1997b:4.

23 For more information on the post mortem of the recent Lesotho crisis, see, amongst others, *Daily Dispatch*, 11 August 1998:1; *Mail & Guardian*, 31 July-6 August 1998:6, 26 August-3 September 1998:6; 18-24 September 1998:3; and *Sunday Times*, 27 September 1998:4.

24 Since the beginning of August, 1998, the renewed conflict in the DRC has put South Africa in a quagmire. For more information in this regard, see, amongst others, *Daily Dispatch*, 7 August 1998:10, 11 August 1998:3, 24 August 1998:1, 31 August 1998:1; *Mail & Guardian*, 28 August-3 September 1998: 6-7; and *Sunday Times*, 30 August 1998:13.

25 South Africa s domestic challenges are well known and well documented elsewhere so that an in-depth analysis is not necessary here. For more information in this regard, see, amongst others, Gwexe 1996:44-53; *Daily Dispatch*, 14 March 1997:16; *Mail & Guardian*, 14-19 March 1997:12; *Indicator SA*, Vol. 11, No. 3 (Winter) 1994:64, Vol. 12, No. 13 (Winter) 1995:33; *Africa Insight*, Vol. 25, No. 4 1995:221; and *New African*, No. 326 (January) 1995:31.

26 For other possible reasons, see Cilliers & Malan 1996:339-346; *Mail & Guardian*, 29 August-4 September 1997:12; and *Sunday Times*, 27 October 1996:15.

Book reviews

CONFLICT AND RESOLUTION: PEACE-BUILDING THROUGH THE BALLOT BOX IN ZIMBABWE, NAMIBIA AND CAMBODIA

GRIFFITH, Allen 1998
New Cherwell Press, Oxford. 337pp
(Allan Griffith, who had been foreign policy adviser to Australian prime ministers or over 30 years, completed this book as Visiting Fellow of Oriel College, Oxford, shortly before his death in November 1998)

The conjunction in the title of this book has not just been inserted as an attention-catching novelty. The book is indeed about both conflict and resolution. In each of the three case studies it is not only the peace process that is described and discussed, but also the preceding conflict process. The serious cause and urgent purpose of each of the conflicts are taken into consideration. The actions and reactions of the involved people and leaders are related in a clear and well-documented way. The extended and complicated series of happenings are organised into insight-promoting units. The author makes very good use of his skills of selecting details and choosing descriptive as well as thought-prompting words. Enough detail is included to give the reader a penetrating sense of what happened. Apposite key words appear in chapter and section headings.

The thinking, searching reader will find more in the three conflict stories than just introductions to the discussions of the subsequent peace processes. Each conflict can be seen as representative of other conflicts with similar or comparable objectives.

This wider significance is implied by the author s key word descriptions of the three conflicts. In Zimbabwe it was a politico/military struggle over self-determination . In Namibia it was a politico/military struggle for independence . And in Cambodia it was a struggle for a modern polity .

In the chapters concerned we are reminded about indigenous peoples, who had maintained their cultures for centuries, and about foreign colonisers, who barged in with their delusion of superiority and their mindset of domination. Our memories are refreshed with regard to the backgrounds of Africa s liberation conflicts — settlers who opportunistically unsettled politico-socio-economic situations, and then foolhardily resisted any change to undo the changes they had inflicted; African leadership who exhibited remarkable reticence and responsibility by generally refraining from using violence; various groups of the people of Africa who eventually lost their patience and opposed their oppression more and more violently. We also get an insight into the complexities of the Cambodian background — a great empire and civilisation, a unifying language, different religious traditions, geographic regions of differing fertility, subordination, occupation and protection by close or more remote neighbours or foreigners, aspirations of independence and freedom.

When the author, and the reader, have given so much attention to the conflicts and their contexts, both local and global, the peace processes can be studied much more fruitfully. The need for patience during a protracted process can be recognised. Reasons for to-and-froing or even reneging can be understood. Attempts to devise plans towards approaching and reaching the objectives of a conflict can be better appreciated.

Readers will undoubtedly be able to accumulate useful learnings from the chapters (of each case study) dealing with pre-negotiation developments, the negotiation process itself, and the eventual implementation of an outcome. Especially valuable, however, is the author s comparative analysis of the three case studies in terms of what is called the democratic legitimation package . When a conflict is waged to change an illegitimate government into a legitimate one, the package usually has to include a cease-fire, a transitional government, and an internationally supervised election. These elements, together with the whole issue of legitimation, are duly focused on in the comparative analysis. Significant inferences are drawn and recommendations are made with regard to the entire peace process. A reviewer should resist the temptation, however, to say too much about such gems. It is the privilege of the readers to discover all the insights and ideas they can integrate into their existing expertise.

That is why this book can be strongly recommended. Each reader should definitely be able to learn surprising new lessons, or enhance lessons previously learnt. What we find will in the first instance be related to peace-building through the ballot box , but may also be of much broader significance. Reading this book will increase anyone s knowledge of fellow human beings, who are acting according to their political, cultural and national patterns of thought. And, more specifically, it will improve our insight into democratic legitimation, which is not only relevant in the struggles of ethnic, cultural or national groups, but also in the everyday life of community groups, workplace groupings, associations and families.

Jannie Malan

CONSTRUCTIVE CONFLICTS:
FROM ESCALATION TO RESOLUTION

KRIESBERG, Louis 1998
Rowman & Littlefield Publishers, Lanham, Maryland. 392pp
(Louis Kriesberg is Professor Emeritus of Sociology and Maxwell Professor Emeritus of Social Conflict Studies at Syracuse University)

The experienced author of this valuable book has tried to provide a comprehensive, realistic approach to conflict resolution theory and practice , and has succeeded remarkably well.

On almost 400 pages he shares his extensive and intensive insight into conflicts as they emerge, intensify, de-escalate and reach outcomes. Throughout the book the social context of conflict in general and conflicts in particular is taken very seriously. The author s definition of social conflict includes both individuals and groups. The appropriate examples from real conflicts which he continuously presents, cover all sorts of destructive and constructive socio-political conflicts. The three cover photos may be regarded as symbols of the kinds of windows which are opened, or opened wider, to readers of the book. They show an individual demonstrator at the Berlin wall, a wide London street filled with placard carrying peace marchers, and Nelson Mandela at the ballot box in South Africa s first democratic election.

What is also clearly emphasised on the cover is that the book focuses on conflicts — constructive conflicts. One of the considerations behind the writing of this book was the desire to understand how people prevent or stop destructive conflicts but instead wage relatively constructive conflicts . While interrelating, in a natural and reader-friendly manner, what can be learnt from theory and practice, the author takes us through the stages inevitably found in conflicts. Two pivotal points in the series of

happenings making up a conflict are highlighted in the sub-title: escalation and resolution. But the actual contents of the entire book give us a most useful, thorough and encouraging discussion of the bases, manifestation, escalation, de-escalation, termination and consequences of conflicts.

A singular advantage of this book is that it is structured in a very meaningful and life-related way, without being prescriptive or dogmatic. In the first chapter a simplified conflict cycle is given as a frame of reference. And in the last chapter a more elaborate version is used in a synthetic, concluding discussion. But then, of the content between the opening and closing chapters, almost exactly one half (49%) is devoted to emerging and escalating conflict, and the other half (51%) to de-escalating and resolving conflict.

In the first half readers are educated, or further educated, with regard to the many ways in which social conflicts (or, in other words, conflicts between human beings with all our similarities and differences) vary. Writing in a thought-prompting and -promoting way, the author consistently communicates the importance of how the partisans of conflicts and the potentially involved bystanders view their struggle . He correctly emphasises that you cannot separate the study of conflicts from a consideration of what people feel about the issues and objectives concerned. What people want to accomplish through a conflict has to be understood properly and taken seriously. How people contest the efforts of others to exercise power has to be explored. (This is no mere repetition of the obvious observation that all conflicts are about power. It is a personalised and socialised perspective on the essence of conflict.)

As can be expected when such an approach is used, the author consistently focuses on the relationships between people. In the first half it is the relationship between adversaries that receive due attention. That, after all, is usually the crucial component of a conflict s origin . In the chapters on conflict there are no less than eight sections on adversary relations. The relational approach is maintained in the second half of the book, where five sections are devoted to changes in relationship, continuing relations between the former antagonists , and consequences of an outcome for adversary relations. Due emphasis is placed on interdependence and integration. As markers of a constructive outcome, not only human rights, equity and justice are mentioned, but also an improved relationship.

In line with this personal perspective, the author has called his chapter on mediation Intermediary contributions , and focused on mediating services (thirteen aspects),

mediator roles (nine possibilities) and mediator contributions (six examples). As elsewhere, each item is substantiated with meaningful references to apt cases from real life. And in line with the orientation to being constructive, a problem-solving approach is discussed in more than one context.

In Louis Kriesberg s *Constructive conflicts* we really have a comprehensive, coherent and contemporary book. But above all, as an eminent scholar like Johan Galtung states in his firm recommendation on the back cover, the book is optimistic . What Galtung says about the comprehensiveness of this potential leading textbook in conflict studies can indeed be endorsed wholeheartedly.

Jannie Malan