

The security sector in Southern Africa



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Edited by Cheryl Hendricks and Takawira Musavengana

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Security Sector Governance Programme

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Glossary

ACCORD	African Centre for the Constructive Resolution of Disputes
ACIPOL	<i>Academia de Ciências Policiais</i> (Academy of Police Sciences)
AFDL	<i>Alliance des Forces Démocratiques pour la Libération du Congo-Zaire</i>
AFZ	Air Force of Zimbabwe
ANC	African National Congress
APRM	African Peer Review Mechanism
ASF	African Standby Force
AU	African Union
BCP	Basotho Congress Party
BDF	Botswana Defence Force
BDP	Botswana Democratic Party
BMATT	British Military Advisory and Training Team
Bonela	Botswana Network on Ethics, Law and HIV/Aids
BPS	Botswana Police Service
CAT	Convention against Torture
CCJP	Catholic Commission for Justice and Peace
CDF	Chief of Defence Forces
CEWS	Continental Early Warning System
CIO	Central Intelligence Organisation
CNDP	<i>Congrès national pour la défense du peuple</i>
COD	Council of Defence
CONADER	<i>Commission Nationale de la Démobilisation et la Réinsertion</i>
CPC	Council of Police Chiefs
CPF	Community Police Forum
CPIA	Centre for Peace Initiatives in Africa
CSA	Correctional Services Act

CSGSA	Control of Security Guards Services, Act 28 of 1984
CSOs	Civil Society Organisations
CSRП	<i>Comité de Suivi de la Réforme de la Police</i>
CSVR	Centre for the Study of Violence and Reconciliation
DCS	Department of Correctional Services
DDR	Disarmament, Demobilisation, and Reintegration
DISS	Directorate of Intelligence and Security Services
DoD	Department of Defence
DoDMV	Department of Defence and Military Veterans
DPC	Defence Policy Council
DPR	Department of Prisons and Rehabilitation
DRC	Democratic Republic of Congo
DSC	Defence Staff Council
EISA	Electoral Institute of Southern Africa
ESAP	Economic Structural Adjustment Programme
FAR	<i>Forces armées rwandaises</i>
FARDC	<i>Forces armées de la République démocratique du Congo</i>
FAZ	<i>Forces armées zaïroises</i>
FDLR	<i>Forces démocratiques de la libération du Rwanda</i>
FRELIMO	<i>Frente de Libertação de Moçambique</i>
GMRRR	<i>Groupe Mixte de réflexion sur le réforme et la réorganisation de la Police Nationale Congolaise</i>
GNR	National Republican Guard
GNU	Government of National Unity
GPA	General Peace Agreement (Mozambique)
GPA	Global Peace Agreement (Zimbabwe)
HRC	Human Rights Commission
ICD	Independent Complaints Directorate
ICRC	International Committee of the Red Cross
Idasa	Institute for a Democratic South Africa
IMF	International Monetary Fund
IPA	<i>Instituto de Patrocinio e Assistencia Juridica</i>
IPU	Integrated Police Unit
ISDSC	Inter-state Defence and Security Committee
ISPDC	Inter-state Politics and Diplomacy Committee
ISS	Institute for Security Studies

JICS	Judicial Inspectorate for Correctional Services
JOC	Joint Operations Command
JSCD	Joint Standing Committee on Defence
JSCI	Joint Standing Committee on Intelligence
LCD	Lesotho Congress for Democracy
LCS	Lesotho Correctional Services
LDF	Lesotho Defence Force
LECONGO	Lesotho Council of NGOs
LMPS	Lesotho Mounted Police Services
MCO	Ministerial Committee of the Organ
MDC	Movement for Democratic Change
MIC	Media and Information Commission
MIDS	Ministry of Interior, Decentralisation and Security
MLC	<i>Mouvement de libération du Congo</i>
MoD	Ministry of Defence
MoU	Memorandum of Understanding
MPD	Metropolitan Police Department
MPR	<i>Mouvement populaire de la Révolution</i>
MPS	Municipal Police Services
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental Organisation
NIA	National Intelligence Agency
NICOC	National Intelligence Coordinating Committee
NSC	National Security Council
NSS	National Security Services
OPCAT	Optional Protocol to UN Convention against Torture
PAC	Public Accounts Committee
PARPA	<i>Plano de Acção para Redução da Pobreza Absoluta</i> (Action Plan for Poverty Reduction)
PCA	Public Complaints Authority
PCCS	Parliamentary Committee on Corrections Services
PCD	Portfolio Committee on Defence
PIDE	<i>Polícia Internacional e de Defesa do Estado</i> (International and State Defence Police)
PNC	Congolese National Police
POPCRU	Police Prisons and Civil Rights Union

PPP	Public/Private Partnerships
PSC	Private Security Company
PVC	Prison Visiting Committee
REJUSCO	<i>Restauração de la Justice au Congo</i>
REWC	Regional Early Warning Centre
RSF	Rhodesian Security Force
SADC	Southern African Development Community
SADCC	Southern African Development Coordination Committee
SADC-CNGO	SADC Council of Nongovernmental Organisations
SADC-PF	SADC Parliamentary Forum
SAHRC	South African Human Rights Commission
SANDF	South African National Defence Force
SAP	South African Police
SAPS	South African Police Service
SAPU	South African Police Union
SARPCCO	Southern Africa Regional Police Chiefs Cooperation Organisation
SASS	South African Secret Service
SDC	State Defence Council
SNAPRI	<i>Serviço Nacional das Prisões</i> (National Prison Service)
SNASP	National Service for Public Security
SSF	SADC Standby Force
SSG	Security Sector Governance
SSR	Security Sector Reform
TRC	Truth and Reconciliation Commission
UNCAT	UN Convention against Torture
UNDP	United Nations Development Fund
UNHCR	United Nations High Commissioner for Refugees
WTO	World Trade Organisation
ZACRO	Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender
ZANLA	Zimbabwe African National Liberation Army
ZANU-PF	Zimbabwe African National Union Patriotic Front
ZDF	Zimbabwe Defence Force
ZIDERA	Zimbabwe Democracy and Economic Recovery Act
ZIPRA	Zimbabwe People's Liberation Army
ZNA	Zimbabwe National Army

ZNLWVA	Zimbabwe National Liberation War Veterans Association
ZPA	Zimbabwe Prisons Act
ZPS	Zimbabwe Prison Service
ZPSP	Zimbabwe Peace and Security Programme
ZRP	Zimbabwe Republic Police

1 Introduction

The Security Sector Governance (SSG) Programme of the Institute for Security Studies (ISS) seeks to strengthen oversight of the security sector through enhancing knowledge and understanding of the policy and legal frameworks, institutions and practices that buttress this sector, and the capacity of legislatures and civil society in Africa to engage in security debates. The SSG Programme conducted baseline studies of the security sector in six Southern African countries, namely Botswana, Democratic Republic of Congo (DRC), Lesotho, Mozambique, South Africa and Zimbabwe, as well as the Southern African Development Community's Organ on Politics, Defence and Security (SADC Organ). The results of this research are reflected in this monograph.

Baseline research provides a foundation for agenda setting. It provides a snapshot of the status quo and an analysis of the dynamics of the local contexts, including an understanding of the political environment and the national and regional security architectures that could facilitate democratic governance of the security sector. Yet these types of studies appear to be few in current literature and analyses.

The quest over the past two decades in Africa has been for the creation of an environment in which human security is paramount. Human security is

premised on the interconnectedness between security, development and democracy. ‘Freedom from fear’, a key tenet of human security, requires a security sector that is responsive to the needs of its citizens. SSG seeks to enable the development of security provision that conforms with democratic norms and values and the rule of law to produce an equitable, efficient and effective delivery of security services. It is therefore an important element to creating human security.

Security Sector Reform (SSR) has been the means through which the security sector in Africa is being transformed to meet the requirements for the stability of the state and the protection of its citizens. According to the UN Secretary-General’s report, SSR is:

a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities who have as their goal the enhancement of effective and accountable security for the state and its peoples without discrimination and with full respect for human rights and the rule of law.¹

OECD-DAC similarly refers to SSR as a process ‘which includes all the actors, their roles, responsibilities and actions – working together to manage and operate the system in a manner that is more consistent with democratic norms and sound principles of good governance, and thus contributes to a well-functioning security framework’.²

Though many African countries have undergone SSRs, especially those that have transitioned from civil war, this sector remains one of concern. The security apparatus has been a source of instability and insecurity, displays partisanship, is unaccountable, and/or lacks human, financial and structural resources to perform its functions adequately. There has been a metamorphosis from protector to predator, often with the tacit approval of incumbent regimes.

Southern African countries have also been through processes of SSR, for example Angola, DRC, Mozambique, South Africa and Zimbabwe. Yet the security sector in many of the Southern African states remains plagued by past configurations and by the afflictions of the security sector in general in Africa. Many of the countries had long wars of liberation and post-independence civil wars that created a security apparatus that was largely partisan, secretive, state-centric and prone to human rights abuse. Currently one may note the politicisation of the

security apparatus in Zimbabwe; the unconstitutional change of government in Madagascar; gross violation of human rights by the security services in the DRC; and corruption and inadequate capacity of the police, defence and correctional services in many countries. This speaks to a need for greater oversight of, and more reforms in, the security sector of this region.

Recommendations for improving the governance of the security sector and the provision of security can be posited if there is an understanding of the nature, structures, processes and behaviour of the security sector and those charged with keeping them accountable. In general, assessments tend to review specific security actors in isolation, and neglect the particularities of national and regional politico-security environments. In 2000 Williams warned that as long as ‘theories, structures and assumed relationships remain divorced from local needs, contexts and realities, the activities pursued become exhausted formal repetitions or mere mirroring of doctrinal mannerisms’.³

The case studies in this monograph begin to close the gap by sketching the political environments that are operative in the selected countries; outlining the constitutional clauses and policy and legal frameworks that govern the security sector; providing an overview of the security actors; identifying the mechanisms and capacity for independent oversight and accountability; and examining the role that civil society plays in monitoring this sector. Each case study concludes with an identification of the key challenges in the security sector that then present points of entry for SSR measures.

METHODOLOGY

The data for this study was compiled through desktop research and primary fieldwork. Researchers from the SSG Programme and consultants with thematic and country-specific specialisations contributed to the study. The six countries were selected based on their political stability – that is, a mix of stable and unstable countries – and the level of democratic reforms of their security sector. This provides a useful starting point for examining the nature of the security sector in Southern Africa. The selected case studies are:

- Botswana: Stable democracy
- DRC: Post-conflict country, with continued conflict in the east; internationally supported SSR in progress

- Lesotho: Unstable democracy that has undergone SSR
- Mozambique: Post-conflict state that has undergone SSR
- South Africa: Recent democracy with substantive SSR
- Zimbabwe: Ongoing political dissention, despite the recent peace agreement

These countries were assessed in terms of their political climate, policy and legal frameworks, actors and institutions, oversight mechanisms and, to an extent, general principles and values that underpin their security sector.

The political climate in a country is an indicator of the security risks that it may face. The security sector does not operate in a vacuum: its independence, effectiveness and the ways in which it engages with other countries and the broader population can often be related directly to the political system and perceived threats within that country. The political climate would thus impact on the political space available for enhancing SSG. Each case study thus starts with a political overview.

Policy and legislation provide the framework in which security and justice institutions operate. The various policies and acts outline the functions of the institutions and the control mechanisms, internal and external, for each department. The constitution, however, is the foundation from which other policy and legal frameworks are derived. The OECD-DAC handbook contends that ‘a review of the legal and legislative framework is therefore essential, as it goes to the heart of ensuring effective and accountable security and justice services’.⁴ The policy and legal frameworks governing the security sector in each of the six country studies are therefore highlighted.

A mapping of the security actors in a country provides insight into the capacity (size, structure and resources) of existing institutions and their practices. Their capacity and conduct in turn are clues to the provision of security services, that is, security for whom, how, and when, and to their level of accountability. In this study, state and non-state actors are incorporated in the security sector. Ball and Fayemi provide a broad overview of these actors:

- Bodies mandated to use force include armed forces, police services, paramilitary forces, intelligence services, border guards and coastguards
- Justice and public security bodies include the judiciary, justice ministries, correctional services, criminal investigation and prosecution services, ombudsmen and traditional justice systems

- Civil management and oversight include executive oversight actors and internal controls, ministries and national security advisory bodies, the legislature, customary and traditional authorities, financial management bodies and statutory civil society organisations
- ‘Non-state security organisations’ refers to non-statutory forces, including militia, liberation armies, private security companies, and civil defence forces, local and international criminal groups
- Non-statutory civil society organisations include professional organisations, advocacy groups, non-governmental organisations, faith-based organisations, the media and the concerned public⁵

Identifying these actors and their current capacities is the first point of call for any meaningful assessment of SSG. In as far as possible, given limited access to information, the case studies detail the nature and functioning of defence, intelligence, police, prisons, private security, oversight mechanisms and the role of civil society.

The functioning of national security sectors is enhanced by the harmonisation of security efforts regionally and continentally. The commitment to collective security is expressed in the security architectures of the AU and regional economic communities (RECs). Understanding the security sector in Southern Africa, therefore, requires knowledge of regional political and security dynamics and structures. The baseline study begins with an overview of the SADC Organ on Politics, Defence and Security Cooperation (henceforth the Organ).

The research undertaken for this study was presented at a three-day workshop on ‘The state of the region: Security sector governance in Southern Africa’, held by the SSG Programme in Pretoria on 17–19 March 2010. This workshop brought together national and regional security sector experts and practitioners and civil society representatives from across the region. The workshop served to broaden the input and analysis of the security sector and validate the findings of the researchers.

MAJOR FINDINGS

The overview of the Organ reveals that despite having objectives that are aligned to a human security approach, its functioning has remained largely

state-centric. The Organ's activities have concentrated on track 1 mediation efforts, monitoring elections and establishing a standby force and an early warning unit. The Organ, in addition to its responsibility to prevent and resolve conflict, has to promote democratic institutions and practices within states. It is concerned primarily with governance and security, and thus one would expect to see an emphasis on ensuring effective, efficient, transparent, responsive and accountable security provision in the region. However, there is no such discernable emphasis in its functioning. But in creating an effective regional standby force there will be spin-offs for the capacity of national security providers. The SADC standby force (SSF) has to comply with the principles, procedures and good conduct as specified by the AU and UN, which will entail the standardisation of norms, procedures and practices of regional peacekeepers that could eventually cascade to the security forces at a national level. For example, peacekeeping training emphasises protection of civilians, respect for human rights, mitigation of gender-based violence, and awareness of diversity through the integration of armed forces from different cultural backgrounds. This does not obfuscate the need for clear guidelines on SSG by the Organ.

The regional early warning centres (REWCs), as envisaged by the AU Continental Early Warning Centre (CEWS), potentially have a wide focus area that includes traditional and non-traditional security threats. There have been lengthy delays in the launch of SADC's early warning centre. It was eventually launched in July 2010. The functioning of the SADC EWC also seems to limit the flow of information as it is largely state intelligence driven. There is a need for an alternative information-sharing and processing hub that could bring together the various sectors within the Organ and those from the other SADC directorates as well as civil society.

Although the SADC Parliamentary Forum (SADC-PF) could potentially function as an oversight mechanism for the Organ, it has not been involved in the Organ's activities. This is primarily because its status in relation to SADC remains unclear. The clarification of its status should be set out in an international agreement that outlines its powers, rights and responsibilities in relation to SADC institutions or SADC-PF should be transformed into a regional legislature with oversight, law-making and budgetary powers such as those of the East African Legislative Assembly.

The space for civil society is slowly opening up and the Organ has agreed to a 'common programme of action' with SADC Council of Nongovernmental

Organisations (SADC-CNGO). This needs to be followed through and the responsibility is largely on the shoulders of civil society to ensure that they are able to engage constructively.

In the revision of the Organ's Strategic Plan of Action, it should incorporate activities that reflect a human security paradigm that speaks to a comprehensive regional security strategy and foregrounds democratic SSG as a prerequisite for stable democratic societies.

States emerging from conflict are more amenable to the introduction of SSR measures. In the past, of the six case studies, Lesotho, Mozambique, and South Africa have undergone SSR. The DRC is currently undertaking SSR measures and Zimbabwe, having signed the Global Peace Agreement (GPA) in 2009, has an opportunity to introduce reform measures. Botswana has not been in conflict. The political climate in the DRC and Zimbabwe, however, is not conducive to the far-reaching reform measures that are needed in these countries. Continued conflict in the east of the DRC and lack of political will impacts on the extent of current reform measures in that country. In Zimbabwe, despite the formation of a government of national unity, the political atmosphere remains tense. It is instructive that the peace agreement did not specifically include efforts to ensure that the security sector abides by its constitution and laws and the basic precepts of civil security relations. The political space in Botswana, deemed currently to be prone to 'authoritarianism', does not bode well for SSR initiatives either. Although countries such as South Africa and Mozambique are politically stable and subscribe to civil-military relations and/or democratic governance of the security sector, there are still gaps in the oversight, capacity and conduct of their security providers. They, too, need to consider where reform is necessary. However, in these countries, the needs of the security sector are competing with other pressing socio-economic needs, to which governments will be more responsive.

The constitutions, policy and legal frameworks of the six case studies indicate that in countries such as Lesotho, Mozambique and the DRC, laws governing the police and prisons may be dated. Many of the countries do not have White Papers that assist in identifying issues and how to resolve them and thus enable improved policy formulation. South Africa developed White Papers for its security sector institutions after its transition, but these now need revision. There is also a lack of national integrated security strategies in all the countries in this region.

Botswana's constitution is under the spotlight, and the powers and immunity that it confers on the president are in question. In Zimbabwe there is no law governing intelligence. Regulating the private security industry is also a gap for many countries. However, it is not necessarily the legislation that is the major problem, but the ability to enforce the legislation. Zimbabwe is a case in point, where the legislation is in place, but has been violated regularly.

The security sectors in all six countries display varying degrees of lack of capacity, lack of training, lack of infrastructure, partisanship, corruption, and human rights violations that impact on the delivery of service.

Botswana has had to cope with the arrival of illegal immigrants from neighbouring countries, especially Zimbabwe, which has impacted on its criminal justice system. The courts are experiencing 'increased backlogs and staff shortages, especially prosecutors, making the constitutionally guaranteed right to a fair trial difficult to implement'. Prisons are not adequately resourced; conditions are generally poor, and are not geared towards successful rehabilitation. Botswana's generally good human rights record is in danger of being tarnished by accusations of 'abuse of detainees by security forces, poor prison conditions, lengthy delays in the judicial process, restrictions on press freedom, violence against women, child abuse, corruption, especially among the junior officers, and torture to extract confession'.⁶

In the DRC, the *brassage*⁷ process that was implemented to create a new army was essentially flawed, for it had a poor selection process, applied no vetting mechanism, and soldiers received only 45 days of basic training. Many of the ills that characterised the previous defence forces remain prevalent. Soldiers seem to be unprofessional, poorly trained, poorly paid, live in deplorable conditions, are ill disciplined, and have been known to commit human rights violations. Much the same is applicable to the police force, although it has been undergoing more extensive SSRs. The Congolese military justice system remains weak, with limited financial resources, a shortage of judges and the intrusion of military commanders into judicial processes. Its prisons are overcrowded with inadequate security and corruption is rife. Meaningful transformation of the penal sector, however, is dependent on an overhaul of the justice system.

In Lesotho the politicisation of the defence and police forces has largely been addressed. Their most pressing issue is the capacity of the justice system and correctional services. Both have serious human resource constraints, and there are widespread allegations of human rights abuse in prisons.

Mozambique's security sector has serious corruption issues and human and financial constraints. This country has one of the lowest ratios of police officers to citizens worldwide with 1 police officer to 1 089 citizens, compared with 450 in South Africa. The justice sector is the weakest sector and prison conditions are well below standard.

South Africa has seen budget cuts to its defence force and has an ageing force, but there is little information about the current combat readiness of the force. The police are adopting a more militarised doctrine that will impact on human rights. In general there appears to be a skills shortage across the security sector.

Zimbabwe's security sector is known to be partisan, and has been implicated in serious human rights violations. Its prison system has virtually collapsed. The dire economic situation and political contestation in this country have affected the functioning of all the security providers.

Oversight mechanisms, though largely in place, in the form of parliaments and parliamentary committees, civilian oversight by ministries, auditors-general, ombudsmen, and so forth, are weak. Parliaments are especially weak, except in South Africa, where there is a vigilant opposition. In Botswana, there appears to be an unwritten rule that defence and security issues are no-go areas for established oversight mechanisms. In the DRC all oversight institutions are ineffectual as they grapple to understand their role in a new democratic order where the space for monitoring and engagement appears limited. In Lesotho the role of parliament in overseeing security institutions remains ineffective with no effective parliamentary committee in place for oversight. In Mozambique there are no government-funded independent external mechanisms to investigate complaints against the police, and a human rights commission, police complaints commission, security services commission and an ombudsman are essential. In South Africa the need for greater oversight of the intelligence sector and for a military ombudsman has been identified. In Zimbabwe, the oversight mechanisms are in place, but their functioning has been far from independent.

Oversight and monitoring are made all the more difficult by the continued secretive nature of the security sector. This lack of transparency is not conducive to the facilitation of democratic governance and the formation of effective, efficient and responsive security providers.

The role of civil society in monitoring the security sector and engaging in the security debate is wanting in all six countries. Only specialised civil society organisations, the majority of which are located in South Africa, have engaged

with this sector. The space opened up by DDR efforts in which civil society has stepped in, for example in Mozambique and the DRC, closes once these tasks have been completed. There is a dire need for civil society to equip itself to take part in debates on SSR and SSG and for governments to open up the space to enable their contributions.

The security sector is not known for its gender equity, in terms either of representation in the sector or of services provided to women. This research again reveals these disparities. The SADC Gender and Development Protocol necessitates that countries in the region include women in this sector on a 50/50 basis by 2015. SADC countries have a lot of work to do if they are to meet this target.

The case studies provide a more detailed account of these issues. They build on previous studies of security institutions in the region. What sets this study apart is that it provides an analysis of the various institutions, which enables comparison not only across countries, but across institutions within a country. It reveals the need for a serious review of the way in which institutions are governed and the way in which security is provided to citizens. If the maxim is valid that without security there is no development, then this becomes a more urgent requirement!

2 Southern African Development Community's regional peace and security architecture

The Southern African Development Community (SADC) is an important establishment for the creation of peace and security in the region. The SADC Common Agenda seeks to 'promote common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate and effective'.⁸ It is therefore constructive within the confines of this study on SSG in Southern Africa that the architecture (regulatory frameworks, institutions and instruments) which SADC has produced to provide greater security for the region be reviewed. As a regional institution, centrally concerned with peace and security, it lays the foundations for the general norms and values that member states should adopt in their provision of security. SADC not only has the responsibility to enhance appropriate and effective SSG of its member states, but its own security-related institutions should conform with the norms, values and responsiveness of a democratic security sector.

This chapter provides a short overview of the formation of SADC, particularly its Organ on Politics, Defence and Security Cooperation (hereafter the Organ) and its legal frameworks. It then describes the standby force (SSF), regional early warning centres (REWCs), Southern Africa Regional Police Chiefs Cooperation Organisation (SARPCCO), SADC-Parliamentary Forum

(SADC-PF) and the ways in which civil society has engaged with the Organ. The key objectives of this overview are to determine the current structure and functioning of the Organ, its strengths and weaknesses, its appropriateness for the security challenges faced by the region, and to make key recommendations about the governance of this regional security structure.

BACKGROUND

SADC was established in 1992 as a regional economic community tasked, among others, to provide common security to the region. Cooperation of states in the region on economic and security-related issues, however, has been long standing and gave birth to what is now known as SADC. In the 1970s the Frontline States cooperated on security issues, and in 1980 they adopted the declaration, ‘Southern Africa: Towards Economic Liberation’, which ushered in the formation of the Southern African Development Coordination Committee (SADCC). SADCC’s emphasis was primarily on economic issues. During this time peace and security issues continued to be dealt with separately by the Frontline States, particularly the Interstate Defence and Security Committee (ISDSC).

The wave of democratisation that swept across Africa in the 1990s created a turning point at which the formation of a more centralised regional economic community, with common norms and values, could be realised in Southern Africa. Regional leaders, taking into account the new political context and asserting the interconnectedness of peace, security and development, signed the Treaty of the Southern African Development Community⁹ on 17 August 1992.

SADC member states are Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe (the membership of Madagascar has been suspended until the restoration of constitutional order in that country).

SADC member states are bound by the following principles:

- Sovereign equality of all member states
- Solidarity, peace and security
- Human rights, democracy and the rule of law

- Equity, balance and mutual benefit
- Peaceful settlement of disputes

The shift to a more centralised organisation with a secretariat based in Botswana was accompanied by a normative transition that emphasised democratic values and the security of the state and its people, that is, a human security orientation. Constructing a democratic environment in the region is a necessary component for good governance; that this should extend to security-related institutions is equally essential. Bryden, N'Diaye and Olonisakin, analysing West Africa, contend that:

The relationship between democratisation and democratic governance of the security sector is less clear [and] ... the commitment of states to principles of good governance at the inter-governmental level does not naturally lead to corresponding change within the state. Therefore, there is a clear need to promote a SSG agenda at both sub-regional and national levels in order to expand the space for meaningful SSR processes.¹⁰

To what extent has SADC sought to address this challenge?

Article 9 of the treaty made provision for the establishment of the Organ on Politics, Defence and Security Cooperation and for Summit to elect the chairperson and deputy chairperson of the Organ. The treaty also made provision for a protocol that outlines the institutional structures and functions of the Organ and for secretariat services to be rendered to the Organ.

The formation of the Organ, however, was a lengthy, somewhat contentious process. It took ten years (from 1992 to 2001) for the Protocol on Politics, Defence and Security Cooperation to be drafted and in 2004 the Strategic Indicative Plan of the Organ (SIPO) outlining the areas of intervention was formalised. Differing views among member states on the structure and functioning of the Organ, and different political cultures and threat perceptions all contributed to the drawn-out process.

The protocol outlines the objectives of the Organ:

- To protect the people and safeguard the development of the region against instability arising from the breakdown of law and order, intra-state conflict, inter-state conflict and aggression

- To promote political cooperation among state parties and the evolution of common political values and institutions
- To develop common foreign policy approaches on issues of mutual concern and advance such policy collectively in international fora
- To promote regional coordination and cooperation on matters related to security and defence and establish appropriate mechanisms to this end
- To prevent, contain and resolve inter- and intra-state conflict by peaceful means
- To consider enforcement action in accordance with international law and as a matter of last resort where peaceful means have failed
- To promote the development of democratic institutions and practices within the territories of state parties and encourage the observance of universal human rights as provided for in the charters and conventions of the Organisation of African Unity and United Nations respectively
- To consider the development of a collective security capacity and conclude a mutual defence pact to respond to external military threats
- To develop close cooperation between the police and state security services of state parties in order:
 - To address cross-border crime
 - To promote a community-based approach to domestic security
- To observe and encourage state parties to implement UN, AU and other international conventions and treaties on arms control, disarmament and peaceful relations between states
- To develop peacekeeping capacity of national defence forces and coordinate the participation of state parties in international and regional peacekeeping operations
- To enhance regional capacity in disaster management and coordination of international humanitarian assistance¹¹

The Organ, in addition to its responsibility to prevent or resolve conflict, has to promote democratic institutions and practices within states. Given that it is concerned primarily with governance and security, one would expect to see an emphasis on ensuring effective, efficient, transparent, responsive and accountable security institutions in the region. However, there is no such discernable emphasis in the functioning of the Organ. Indeed, the Organ itself maintains the trend of lack of transparency, as is reflected in Article 12 of the Protocol on

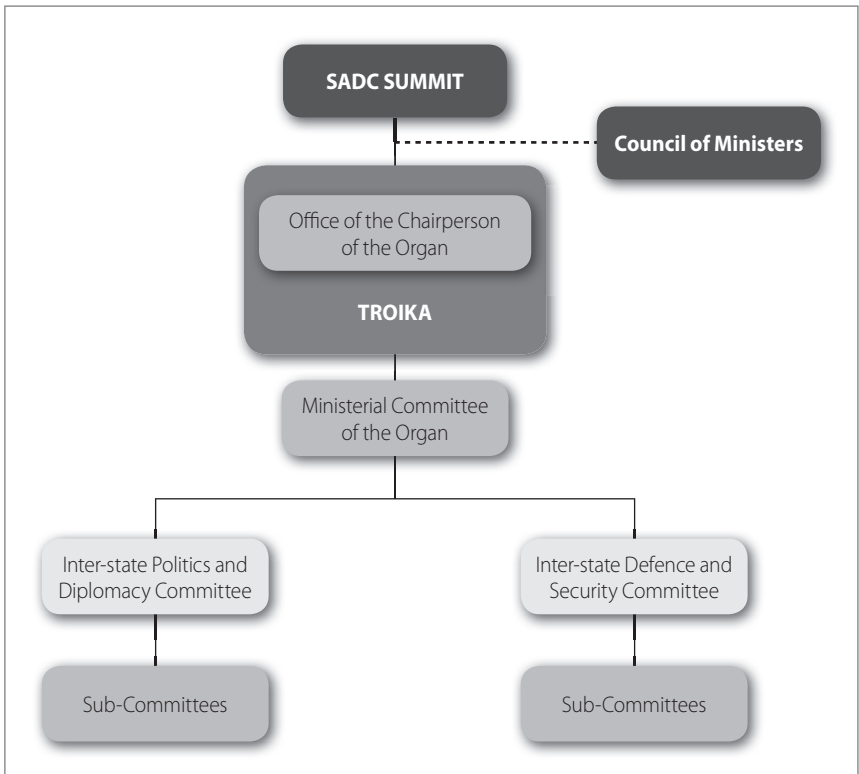
Politics Defence and Security, which ensures that the deliberations of the Organ and its committees maintain strict secrecy.

STRUCTURE OF THE SADC ORGAN

The Organ reports to the SADC Summit. It has these structures:

- Chairperson of the Organ
- Troika
- Ministerial Committee
- Interstate Politics and Diplomacy Committee (ISPDC)
- Interstate Defence and Security Committee (ISDSC)

Figure 1 Structure of the Organ on Politics, Defence and Security



- Other sub-structures as may be established by any of the ministerial committees

Summit: It consists of heads of state and government and is the supreme policy-making institution of SADC. It meets twice a year and elects a chairperson and a deputy chairperson on a rotating basis for one year. Summit also elects the chairperson and deputy chairperson of the Organ.

Chairperson of the Organ: The chairperson, in consultation with the Troika, is responsible for overall policy direction and for the achievements and objectives of the Organ during the one-year tenure.

Troika: The incoming, current and outgoing chairpersons of the Organ form the Troika. It functions as a steering committee.

Ministerial Committee (MCO): It consists of the ministers of foreign affairs, defence, public security and state security from each of the state parties. The MCO is responsible for coordinating the work of the Organ and its structures. It reports to the chairperson. Ministers from the same country as the chairperson chair the MCO, ISPDC and ISDSC for one year on rotation. The committee convenes at least once a year.

Inter-state Politics and Diplomacy Committee (ISPDC): It consists of the ministers of foreign affairs from each of the state parties. The ISPDC reports to the MCO. It meets at least once a year.

Inter-state Defence and Security Committee (ISDSC): It consists of ministers of defence, public security and state security. It deals with the objectives of the Organ as they relate to defence and security. It reports to the MCO. It meets at least once a year.

Sub-committees: They consist of senior officials and deal with matters pertaining to their sector between ISPDC and ISDSC meetings.¹²

The integration of the Organ into the main SADC structure was a marked improvement from the previous Frontline States' arrangements in terms of the governance of this security sector. It reduced the possibility of contentious deployment of troops in the region and created more transparency of the work of the Organ. Though knowledge of issues and decisions taken by the Organ is not readily accessible to the public, except in the form of a communiqué, the Organ is required to obtain approval for its engagements from Summit.

Civil society is not formally incorporated into SADC structures and has had little engagement with the work of the Organ.

SADC has established the SADC Tribunal, which is 'entrusted with the responsibility to ensure adherence to, and proper interpretation of the provisions of the SADC Treaty and subsidiary instruments, and to adjudicate upon disputes, referred to it'.¹³ This is an important oversight mechanism for all SADC institutions, including that of the SADC organ, and for national states. To date, though, the functioning of this tribunal remains questionable, as the case of Zimbabwe refusing to recognise it as a legitimate legal body illustrated. At its Heads of State and Government Summit in August 2010 in Namibia, SADC opted to review the role, functions and terms of reference of the tribunal.

The Strategic Indicative Plan of the Organ (SIPO) was passed in 2004 and is a five-year guide to operationalising the focus areas for the Organ. It is divided into four sectors: political, defence, state and public security. Within SIPO a set of objectives correspond with the overall objectives of the Organ and there is an aligned list of activities per objective. The five-year period of implementation for SIPO came to an end in 2009 and SADC is developing a new strategic plan. Disarmament, demobilisation and reintegration (DDR), as the first stage of security sector reform (SSR) in post-conflict countries, is mentioned as an activity in SIPO. In particular, the need to develop a handbook on DDR is identified, but this has not materialised. SSR and SSG are not listed as objectives of the Organ. Indeed, its focus over the last five years has been on conflict prevention and resolution through mediation and the development of deployable forces, and rarely on the governance of those forces, at national or regional level. SADC should therefore give governance issues equal prioritisation and view them as a key component of conflict prevention.

KEY SECURITY-RELATED INSTRUMENTS OF THE SADC ORGAN

The mechanisms for conflict prevention, conflict management and resolution and the facilitation of broader security envisaged by the Organ are:

- Advisory and mediation instruments such as SADC Electoral Advisory Council (SEAC), Human Rights Commission and the Mediation Unit. These have yet to be established, though many high-level (track 1) mediation efforts

have already been undertaken, notably in the DRC, Lesotho, Madagascar and Zimbabwe

- Regional early warning centre (REWC)
- Mutual Defence Pact
- SADC Standby Force (SSF)
- Disaster Management and Mitigation Unit
- Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO)

The next section focuses on the nature and functioning of some of these mechanisms.

Regional early warning centre

Article 11.3b of the Protocol on Politics, Defence and Security Cooperation provides for the establishment of a regional early warning system to facilitate action to prevent the outbreak and escalation of conflict. SIPO provides for the establishment of an early warning unit in each member state as part of the state security sector.

The functions of the REWC are:

- To implement an early warning mechanism to promote peace, security and stability in the region
- To articulate a holistic approach to anticipating potential conflicts in the region
- To support regional mechanisms for conflict prevention
- To strengthen existing national mechanisms to feed into SADC mechanism
- To establish a database system for early warning in SADC
- To compile strategic assessment and analyses of data collected at the regional level
- To conduct research on conflict issues
- To share information among member states on major issues that threaten the SADC security and stability
- To arrange technical review meetings among relevant institutions to reconsider methodologies and operational issues with the view to making early warning mechanisms more effective¹⁴

The focus areas of the REWC are:

- Conflict situations
- Natural and climatic disasters
- Illicit trade in small arms and in drugs
- Human trafficking
- Unregulated/undocumented migration
- Economic-related development
- Organised crime and money laundering
- Acts of terrorism
- Negative effects of globalisation
- Opportunistic and communicable diseases
- Food security
- Maritime security
- Mercenary-related activities
- Unconstitutional change of governments
- Extremism
- Illicit activities of private security companies
- Foreign interference¹⁵

The REWC therefore has a wide range of focus areas that include traditional and non-traditional security threats.

The establishment of the early warning centre was planned as a two-phase implementation process in which phase 1 consisted of the development of the concept, and phase 2 the physical establishment of the centre.

The REWC is to be linked to national early warning units and to the AU's Continental Early Warning System (CEWS). The REWC should have been operational by 2008. SADC's EWC at first progressed well, developing indicators and guidelines by 2005. It was scheduled to be launched in 2006, but was only launched in July 2010. The delays have primarily been in the acquisition of specialised equipment and human and financial resource constraints.

One of the major challenges for the REWC is its orientation as an intelligence-based system rather than the open source nature of the CEWS of the AU.

Rather than allowing for a direct exchange of information and analysis with the African Union, the SADC system will apparently only

disseminate its strategic reports through the office of the president that chairs the SADC Organ to the African Union.¹⁶

This will limit the flow of information and thus the timeliness of crisis identification and response. There is already discernable lack of information sharing within the Organ and among the directorates (Food, Agriculture and Natural Resources; Infrastructure and Services; Politics, Defence and Security; Social and Human Development and Trade, Industry, Finance and Investment) within SADC. This would indicate the need for an alternative method of information sharing and development of appropriate responses within SADC as a whole, an information-sharing hub, so to speak.

SADC Standby Force

SADC Standby Force (SSF) is part of the African Standby Force (ASF). Article 13.1 of the 2002 Protocol Relating to the Establishment of the Peace and Security Council of the African Union calls for the establishment of an African Standby Force. The purpose of the ASF is to provide the AU with capabilities to respond to conflicts through the deployment of peacekeeping forces and to undertake interventions pursuant to Articles 4(h) and (i) of the constitutive act in terms of which the AU was established. The ASF is intended for rapid deployment for a multiplicity of peace-support operations, which may include preventive deployment, peacekeeping, peacebuilding, post-conflict disarmament, demobilisation, re-integration and humanitarian assistance. The force will consist of standby brigades in the five sub-regions of Africa.

The six scenarios for deployment are:

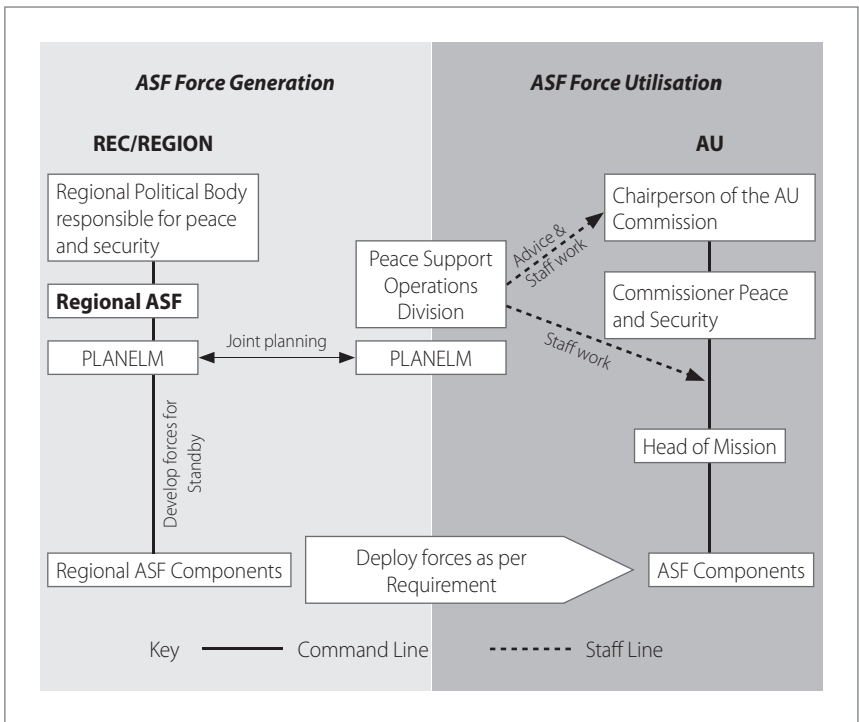
- Military advice to a political mission within 30 days of mandate
- Observer mission with UN in 30 days
- Stand-alone observer mission in 30 days
- Chapter VI and preventive deployment in 30 days
- Complex emergencies in 30 days for military, 90 days rest
- Intervention within 14 days (genocide)

The establishment of the ASF was envisaged in two phases.

- *Phase 1:* Up to 30 June 2006 (subsequently changed to June 2007). The AU’s key objective during this period was to set up the strategic-level management capacity, while the regions would complement the AU by establishing forces up to brigade-level strength (+/-5 000 soldiers) for up to scenario 4 capability. In phase 1 the priority was on consolidating the military and police aspects of the ASF.
- *Phase 2:* By 30 June 2010 the AU should have developed full capacities for scenario 5 and 6 missions, which implies a military brigade, police and civilian components. Continental security realities also forced the AU Commission to request acceleration in the establishment of the rapid deployment capabilities (RDC) within the regional standby forces.

The command and control status of the ASF are reflected in figure 2.

Figure 2 The relationship between force generation and force utilisation¹⁷



Source Developed by Johan Potgieter

The ASF concept calls for rapid deployment capability. During the first phase, 1 000 personnel (mostly infantry, police and civilians) must be ready to deploy within 14 days and a follow-on force (second phase) of 1 500 or more must be ready within the next 14 days.¹⁸ Since the force has to be logistically self-sustainable for at least a month, it will have to deploy fully equipped.

Although not the original intention, the role of the current ASF is to deploy in advance of the UN, which follows on with multi-dimensional peace-support operations. The exit strategy for ASF operations has therefore in effect become a transition to the UN.

The SADC chiefs of defence staff and police chiefs approved the modalities for the formation of the SSF in July 2004 in Maseru, Lesotho. The SADC Brigade (SADCBRIG) was launched on 17 August 2007.

The memorandum of understanding (MoU) that underpins the associated arrangements among SADC member states notes that ‘The command structure of any SADCBRIG headquarters shall strictly be representative of all contributing State Parties.’¹⁹ According to the MoU (Article 4) the functions of SADCBRIG are:

- Observation and monitoring missions
- Other types of peace-support operations
- Intervention in a state party in grave circumstances or at the request of that state party, or to restore peace and security
- Preventative deployment in order to prevent:
 - A dispute from escalating
 - An on-going violent conflict from spreading to neighbouring areas or states
 - The resurgence of violence after parties to a conflict have reached an agreement
- Peacebuilding, including post-conflict disarmament and demobilisation
- Humanitarian assistance to alleviate the suffering of civilian population in conflict areas
- Any other functions as may be authorised by the SADC Summit²⁰

The MoU outlines the functions of the civilian component as:

- Provision of human resources, financial and administrative management

- Humanitarian liaison
- Provision of legal advice
- Protection of human rights including women and children²¹

The Planning Element (PLANELM), co-located with the SADC Secretariat in Gaborone, is responsible for the day-to-day functioning of the SSF. The posts of chief of staff and five senior military officers are filled by member states on a three-year rotational system. Seven more posts in the PLANELM have recently been filled from generous financial contributions through the AU Peace Facility.

SADC Police PLANELM is also functional and has four seconded members. SADC has employed a deputy correctional services commissioner to ensure the development of similar standards in SADC member states and standard operating procedures during peace-support operations.

The SSF has also progressed in terms of rapid deployment capability (RDC). The rapid deployment force does not form part of the main brigade, but provides added deployable capacity.²²

The region has undertaken a number of peacekeeping exercises, culminating in a field training exercise in September 2009. The scenario 6 (complex multi-dimensional intervention) exercise, with almost 7 000 participants from SADC member states, representing the three ASF components, tested the validity/applicability of the guidance documents. However, they have not yet finalised the civilian component or the details of the establishment of a logistic concept and depot.

Having completed its doctrine, operational guidelines, standard operating procedures, and logistic concept and verified the various countries' pledges, these challenges remain:

- The need for additional forces on standby because some pledged forces/elements are committed elsewhere
- Finalisation of the standby concept and roster
- Funding
- Logistic support and location of the depot
- Operationalisation of an early warning system
- Interoperability (equipment, etc.)
- Effective coordination and communication

■ Capacity building, especially in a civilian environment²³

In terms of promoting general SSG in the region, the SSF will probably increase the capacity for effectiveness in dealing with peace and security, for it creates collateral capability that can intervene in instances of instability and humanitarian disasters. In addition, the force has to comply with the principles, procedures and good conduct as specified by the AU and UN, and the spin-off will be the standardisation of norms, procedures and practices that could eventually cascade to the security forces at national level. For example, peacekeeping training emphasises protection of civilians, respect for human rights, mitigation of gender-based violence, and awareness of diversity through the integration of armed forces from different cultural backgrounds. Given that the members of the SSF have to undergo constant training, and that through deployment soldiers will be exposed to differing conditions, and so forth, the effectiveness of those in national security sectors that participate will continuously increase.

There is a big question around the accountability of the SSF. Article 7 of the MoU notes that ‘the SADC BRIG shall only be deployed on the authority of the SADC Summit’. But, if the SSF is a component of the ASF, then the AU Peace and Security Council should be the only one that can mandate the AU Commission to deploy the forces (the region prepares forces and the AU uses them). Authority to deploy is likely to become a contentious issue in future. Good governance would necessitate that the SSF cannot mandate itself to intervene, and neither should its political principles. This should rest with the AU. Already, delays in deployment of forces by the UN or the AU are always due to political will. If sole decision making on deployment of the SSF rests with SADC, this will be problematic.

Southern Africa Regional Police Chiefs Cooperation Organisation

Southern Africa Regional Police Chiefs Cooperation Organisation (SARPCCO) was officially established in August 1995 with its headquarters in Harare, Zimbabwe. In 1997 SARPCCO was ‘adopted’ by Interpol, to become its Regional Bureau for Southern Africa. Since then, the bureau has acted as the Secretariat for SARPCCO. In 2009 the organisation was integrated into the Organ. However, the practicalities of this shift are still being resolved within the structures.

SARPCCO is governed by a constitution, which, among other things, commits it to achieving certain objectives:

- To promote, strengthen and perpetuate cooperation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications
- To prepare and disseminate information on criminal activities as may be necessary to benefit members in their attempts to contain crime in the region
- To carry out regular reviews of joint crime management strategies in the light of changing national and regional needs and priorities
- To ensure the efficient operation and management of criminal records and the efficient joint monitoring of cross-border crime, taking full advantage of the facilities available through Interpol
- To make recommendations to governments of member countries in relation to matters affecting effective policing in the Southern Africa region
- To formulate systematic regional police training policies and strategies, taking into account the needs and performance requirements of the regional police services or forces
- To carry out any relevant and appropriate acts and strategies for purposes of promoting regional police co-operation and collaboration as dictated by regional circumstances²⁴

The Council of Police Chiefs (CPC) has been the highest decision-making body. It presides over all policy matters and oversees regional police cooperation as well as the proper functioning of all SARPCCO structures. Since the integration of SARPCCO into SADC the relationship between the Council and the SADC summit has remained unclear.

The Permanent Coordinating Committee (PCC) consists of the heads of the criminal investigation services of each member country. This committee coordinates regional cooperation, plans and executes joint crime-combating operations and implements all SARPCCO resolutions.

The Legal sub-Committee, made up of the heads of legal units of police forces/services attends to all legal matters that may hamper police cooperation and lobbies for harmonising regional legislation.

The Training sub-Committee is made up of the directors of training institutions of police forces/services. This committee coordinates and conducts regional operational police training needs analyses and the implementation of capacity-building interventions.²⁵

The chairpersonship rotates annually among the members.

The strategic plan adopted by SARPPCO early in its existence centres on the identification of priority crimes, so that as much information as is available on them is gathered, shared and utilised to 'counter the[ir] incidence'. The prioritisation of crimes can be informed by dominant interests, some of which lie outside the realm of criminal justice systems. In no instance is this better illustrated than in activities such as terrorism, money laundering, trafficking in counterfeit commodities and trafficking in human beings. Ranking criminal activities has important strategic and practical consequences in that it eventually influences decisions on policy shifts and resource allocation.

As a division of Interpol, SARPPCO is expected to reinforce the criminal justice input into the process of determining the areas that are most critical to law enforcement in the region. It also has the responsibility of infusing the process with contemporary global perceptions, while de-politicising it. This is part of the reason behind the emphasis on the exchange of criminal intelligence and the coordination of initiatives. The latter has developed over the years into joint operations and joint training exercises.

Transnational cooperation in investigating crime can be problematic. An agreement signed in Harare in October 1997 pertains to cooperation and mutual assistance in crime combating. It purports to regularise cross-border police investigations, questioning witnesses, seizing exhibits, and tracing proceeds of crime in the absence of bilateral or multilateral treaties.²⁶ Questioning witnesses, arrests, seizures, and tracing proceeds of crime have to be carried out by police officers of the host country. The agreement preceded the UN Convention against Transnational Organised Crime, as well as SADC protocols on cross-border cooperation in this sphere. In the words of the former head of the SARPPCO Secretariat, Commissioner Frank Msutu:

This agreement opened a new chapter to policing in Southern Africa as it removes all suspicions about whether one police force or service could act on information from another. The agreement also allows for the exchange

of criminal intelligence as the police in the region recognised the fact that criminals are not controlled by political boundaries. Police forces have traditionally been taught to be guardians of information. Because of legislation guarding official secrets, there was previously no scope for providing information to a foreign police organisation. As a result, criminal intelligence was jealously guarded and would never be disclosed.²⁷

The SARPCCO constitution and agreement have assisted in the exchange of information in order to combat criminal activities in the region, and have facilitated the planning of intelligence-driven joint operations – at the rate of two per year in the first five years. These targeted motor vehicle theft, drug cultivation and trafficking, firearms trafficking, fugitives from justice, diamond smuggling, and illegal migration. Some of the operations involved a cluster of countries simultaneously. Motor vehicle theft was the focus of attention in joint Operation V4, which was conducted between February and March 1997, and involved Mozambique, South Africa, Zambia and Zimbabwe. Over a 12-day period, 1 576 stolen vehicles were recovered, of which 92 per cent had been stolen from South Africa.²⁸ Other regional operations that followed this strategy included:

- Operation Atlantic, July 1998, covering Botswana, South Africa and Namibia
- Operation Midas, June 1998, covering Lesotho, Mauritius, South Africa and Swaziland
- Operation Stone, April 1998, covering Angola, Botswana and Namibia
- Operation Sesani, April 1999, covering Botswana, Tanzania, Malawi, South Africa and Zimbabwe
- Operation Makhulu, July to August 2000, covering Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland and Zimbabwe

Although these joint operations were designed to control and seek further intelligence on drugs, firearms, diamonds and illegal immigration, the planning sessions noted that motor vehicles were the common denominator in all the targeted crimes. SARPCCO undertook Operation Mamba in Tanzania in 2008 and in 2009 Operation Fiela in Lesotho (both targeting counterfeit pharmaceuticals).²⁹ Effective control of the trans-border

movement of stolen vehicles would therefore go a long way towards controlling the other crimes.

SARPCCO member countries face certain common challenges, which have been crystallised as the prevailing priority crimes. At the moment the list comprises:³⁰

- Smuggling and illegal importation of goods and counterfeit commodities
- Drug trafficking
- Smuggling stolen motor vehicles
- Armed robberies
- Smuggling endangered species and rare resources
- Financial crime
- Money laundering
- Illegal migration, people smuggling and human trafficking
- Terrorism
- Stock theft
- Corruption

SARPCCO Code of Conduct

SARPCCO Code of Conduct was adopted in Harare, Zimbabwe, in 2001. It serves as the minimum standard for police forces/services in the region. Each of the member states is required to implement it at national level. Police from member states are also supposed to undergo training, organised by SARPCCO Training Committee, on the aspects entailed in the code of conduct. The code establishes a basis for the behaviour of the police, in accordance with democratic standards. Ensuring the implementation of the code, though, appears to be lacking, as enforcement mechanisms by SARPCCO are not in place.

Challenges for SARPCCO

Corruption

Corruption weakens the integrity and effectiveness of institutions, corroding ethical standards. Corruption may impact negatively on the detection, investigation and prosecution of crime. Interpol believes that corruption ‘fuels’ transnational organised crime and that organised criminals would not be able to carry out their illegal activities without the complicity of corrupt public

Box 1 SARPCCO Code of Conduct

- **Respect for Human Rights:** In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold all human rights for all persons.
- **Non-Discrimination:** Police: Officials shall treat all persons fairly and equally and avoid any form of discrimination
- **Use of Force:** Police Officials may only use force when strictly necessary and to the extent required for the performance of their duties adhering to national legislation and practice
- **Torture, Cruel, Inhuman or Degrading Treatment:** No police official, under any circumstances, shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment to any person
- **Protection of Persons in Custody:** Police Officials shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required
- **Victims of Crime:** All victims of crime shall be treated with compassion and respect. Police officials shall ensure that proper and prompt aid is provided where necessary
- **Respect for the Rule of Law and Code of Conduct:** Police officials shall respect and uphold the rule of law and the present Code of Conduct
- **Trustworthiness:** The public demands that the integrity of police officials be above reproach
- **Corruption and Abuse of Power:** Police officials shall not commit any act of corruption or abuse power. They shall rigorously oppose and combat all such acts. Police officials shall not accept any gifts, presents, subscriptions, favours, gratuities or promises that could be interpreted as seeking to cause the police official to refrain from performing official responsibilities honestly and within the law
- **Performance of Duties:** Police officials shall at all times fulfil the duties imposed upon them by law, in a manner consistent with the high degree of responsibility and integrity required by their profession
- **Professional Conduct:** Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve
- **Confidentiality:** Matters of a confidential nature in the possession of police officials shall be kept confidential, unless the performance of duty and need of justice strictly require otherwise
- **Property Rights:** In the performance of their duties, police officials shall respect and protect all property rights. This includes the economical use of public resources

officials.³¹ A recent symposium noted that corruption impeded political will in some countries, to the extent that it prevented the adoption of measures to facilitate mutual legal assistance and other forms of international cooperation. In those instances, international legal instruments could well be a source of support for regionally coordinated law enforcement initiatives.

SARPCCO is mandated to ensure the flow of crime-related information and intelligence within the region to enable affected countries to monitor changes and developments. Corruption is perceived to facilitate and anchor the other priority crimes. A persistent challenge to law enforcement is the collusion between personnel in gate-keeping agencies, such as customs or police and criminals. A complicating factor is the involvement of politically positioned individuals.³²

Capacity

SARPCCO is mandated 'to coordinate regional training activities in order to assist in raising the general performance of specialised police units to acceptable standards', according to the requirements of the police chiefs of the region, and to prepare and facilitate any training initiatives that may be required by Interpol from time to time.³³

Legal disparities that may be potentially problematic to police cooperation and joint activities should be resolved through the Legal Subcommittee. Getting a definition of organised crime that can be applied across the region is an issue on whose resolution intra-regional coordination seems to depend.

Because SARPCCO has to produce and circulate a valid and useful assessment of the threat emanating from organised crime, it is incumbent on the Legal sub-Committee to motivate for a universal definition of the phenomenon. At the time of writing, in January 2010, this had not occurred, with adverse results for the quality and utility of the regional organised crime threat assessment (ROCTA).

Other pertinent aspects of capacity are:

- Personnel adequacy
- Forensic support services
- Access to appropriate technology
- Mobility
- Financial resources

Unless the police collaborate with other institutions in pursuing transcontinental crime barons, successes will be few. What is called for is a paradigm shift in the direction of integrated confrontation of trans-national crime. At the very

least, this requires the ability to access, connect and use data from multiple sources (each of which may hitherto have worked in isolation) in order to identify and apprehend criminals.

Dynamic criminal environment

The criminal environment changes constantly. New forms of crime crop up at about the same pace as changes in methods of committing older forms of crime. SARPCCO's role in drawing lessons from developments in other parts of the world remains particularly useful. As Interpol Secretary General Ronald Noble put it:³⁴

... any open door can also lead to unknown risks. Criminals have shown incredible skill at employing state-of-the art technology to advance their objectives. Amazing innovations can become powerful weapons in the wrong hands.

Criminal innovation manifests itself regularly in new forms of cyber crime, and the use of stolen personal identity data. Of equal importance is the emergence of forms of tax evasion committed through profit-shifting strategies involving multi-national corporations. Innovative criminal stratagems require innovative responses. SARPCCO is interested in networking closely with organised business and dedicated institutions.

SADC Parliamentary Forum

Article 9(2) of the SADC treaty lays the foundation for the formation of SADC Parliamentary Forum (SADC-PF). SADC-PF was launched in July 1996, making it 'technically the oldest regional parliamentary structure' in Africa.³⁵ It acts as an 'autonomous institution of SADC'.

The primary objective of SADC-PF is to strengthen the implementation capacity of SADC by involving parliamentarians in the work of SADC. Other objectives include facilitating the effective implementation of SADC policies and projects, promoting principles of human rights and democracy within the SADC region. In Article 8 (ix) of its constitution, SADC-PF commits its members to the encouragement of good governance, transparency and accountability in the SADC region and in the operation of SADC institutions,

in addition to promoting the participation of non-governmental organisations, business and intellectual communities in SADC activities.³⁶

Article 5 of its constitution empowers the Plenary Assembly, its supreme policy-making structure:

To consider and make recommendations on policies, strategies and work programmes of SADC, scrutinise and make recommendations on the budget of SADC, consider and make recommendations on the SADC Executive Secretary's Annual Report ... including SADC audited accounts, consider and make recommendations on any treaties and draft treaties referred to it by SADC ... study, be briefed and make recommendations on all SADC Sectoral reports.³⁷

These functions are quasi-legislative in nature, which, as currently constituted in form, function and competence SADC-PF is not. Not surprisingly, in its ten years of existence, SADC-PF has not been able to exercise these functions or such powers as would ordinarily be vested in a formal parliament. Far from being known for legislative oversight, SADC-PF is 'perhaps best known for its observation of elections ... its setting of election standards ... and its efforts to enhance the participation of women in national parliaments'.³⁸ Its seminal work in developing regional election standards and model legislation on HIV and Aids has largely gone unnoticed by SADC regional policy-making machinery. Why SADC-PF has not been able to exercise the full extent of the powers conferred to it through its own constitution is an important area of inquiry.

SADC-PF constitution envisages the evolution of the organisation into a future legislative assembly. But in Article 8(3)(b) it qualifies the legislative mandate by unambiguously stating that the assembly would not infringe 'on the sovereignty of SADC national parliaments' legislative functions'.³⁹ This raises questions as to whether there is a common agenda of transforming the SADC PF into a fully fledged legislative body with supra-national powers if ultimately there is no intention of infringing on the sovereignty of national parliaments. Why even contemplate establishing a regional parliament if it would be subordinate to national laws and constitutions and lack supranational authority? Although there was the expressed intention of transformation, there seems to be lack of clarity on the exact nature, extent of powers and functions of such a parliament.

The role and influence of SADC-PF in the policy-making processes of SADC has been eloquent in its absence. In the ten years or so of its existence, the SADC-PF has been peripheral to, if not completely excluded from the decision-making structures and processes of SADC. It has neither been consulted on nor contributed to regional policy formulation, including the more than twenty protocols and declarations that SADC has developed so far. Since SADC-PF is not a formal structure of SADC, and the structural arrangements of SADC do not envisage a role for parliaments in policy formulation, parliamentarians come into contact with regional policy and protocols only when ministers bring these policies and protocols to national parliaments for ratification. By that time, such policies are *faits accomplis* because the signatures of heads of state and government or responsible ministers have already been appended. Given the hierarchies of political parties and governments in Africa – where the party leader is invariably the head of state and/or government – parliament's power of ratification has largely become an academic or rubber-stamping exercise. Instances of parliaments withholding ratification in southern Africa are hard to find.

SADC-PF could act as an accountability mechanism for SADC and the Organ. However, to do this effectively it has to first clarify its status within SADC and then develop the capacity to keep effective watch over the Organ. Central to the clarification of its status is the need for an international agreement or protocol setting out the powers, rights and responsibilities of SADC-PF in relation to institutions of SADC and/or the transformation of SADC-PF into a regional legislature with oversight, law-making and budgetary powers such as those of the East African Legislative Assembly.

Despite these limitations, SADC-PF remains an important institution in the region for it provides a forum where parliamentarians can get to know one another and gain insight into perspectives from other countries. They can identify issues of mutual concern and reach joint positions which they can feed back into their national debates.⁴⁰

CIVIL SOCIETY ENGAGEMENT WITH THE SADC ORGAN

The relationship between NGOs and SADC, specifically with the Organ, is outlined in Article 16A and Article 23 of the SADC Treaty;⁴¹ Article 4 of the SADC Protocol on Defence, Peace and Security Cooperation;⁴² and the MOU

between SADC-CNGO and SADC Secretariat. The MOU spells out the need for a framework of cooperation between SADC and the Council of NGOs. The SIPO also alludes to the involvement of civil society in a variety of areas in order to implement the strategic framework.

To systematise and strengthen its engagement with the Organ, SADC-CNGO negotiated for more space and structured engagement with the Organ in 2007 and 2008. The result was the Joint Programme of Action adopted in 2008 by the SADC Ministerial Committee. From 2009, there is evidence of opening up of space by the Organ for civil society to participate in SADC processes.⁴³

However, from the establishment of the Organ, in spite of these policy provisions, there has been little coordinated civil society interaction with the Organ. Civil society leaders have argued that SADC peace and security framework and architecture, like any other SADC structure, is largely state centric.⁴⁴ Only expert organisations such as the Electoral Institute of Southern Africa (EISA); the Institute for Security Studies (ISS); Centre for Peace Initiatives in Africa (CPIA); and the African Centre for the Constructive Resolution of Disputes (ACCORD) have had working relationships with the Organ.

SADC-CNGO and regional organisations such as EISA have collaborated with the Organ on electoral issues, including election observation missions. CPIA and ACCORD have been invited on many occasions to train at the SADC Regional Peacekeeping Training Centre. In addition, through the Training for Peace in Africa Programme, ACCORD has implemented a peacekeeping capacity-building programme where the core activities include training civilian and police peacekeeping and peacebuilding personnel; applied research, publication and dissemination; and policy development. The organisation has assisted the AU and will work with the SSF to finalise the development of a policy on civilians and/or mainstreaming the civilian component in SADC military doctrine.

The staff of the Organ's directorate contend that they have received a vast amount of correspondence from civil society organisations soliciting space for engagement, but they would prefer to work with NGOs in a coordinated fashion.⁴⁵

A sign of the opening up of the Organ and its increasing collaboration with civil society is the invitation SADC-CNGO received to participate in SSF Exercise Golfinho (1–26 September 2009) as civil society civilians. Eleven civil society representatives from SADC member states participated in the exercise.

Other organisations, such as International Red Cross and the ISS, were invited in their individual capacities. SADC-CNGO was later invited to participate in a post-action review workshop in October 2009 in Harare. This exercise seems to have been a turning point for civil society as it opened up dialogue on civil-military relations: civil society representatives held meetings with the heads of the military, police and civilian organisations during the exercise.⁴⁶

The Common Programme of Action agreed to in 2008 is a unique opportunity for deepening collaboration between NGOs and the Organ. The priority areas and joint activities agreed to are demobilisation, disarmament and re-integration programmes in countries such as DR Congo; participation in SADC peace-support operations; capacity building in preventative diplomacy and mediation; the launch of SADC Early Warning System, election observer missions; and training the police and military in human rights and democracy issues.⁴⁷ The programme details the substance of cooperation between NGOs and SADC on SSG as well as peacebuilding in its broader sense. SADC-CNGO sees itself as a platform and facilitator of engagement between NGOs and SADC, not as an implementer.

KEY CHALLENGES AND RECOMMENDATIONS

The Organ has seen significant progress in its development of regulatory frameworks, formation of mechanisms and institutions and in its efforts to implement its plan of action. These initiatives have all contributed to its overall objective of creating peace and security in the region. However, it faces significant challenges that it will need to address as it charts a new five-year strategic plan.

- The Organ has paid little direct attention to the governance of the security sector of its member states. It must place more emphasis on developing common standards for the governance and the functioning of national security sectors. These guidelines have to foreground the principles of transparency, accountability, participation and responsiveness to the needs of the people
- The Organ has to promote the development of national integrated security strategies that cohere with a regional security strategy
- SADC needs to build in enforcement mechanisms for non-compliance with protocols that have been ratified

- Although the Organ is beginning to engage civil society, there is a dire need for this engagement to be strengthened. Space should be created for civil society to feed into the ISDSC and ISPDC Ministerial Committees on issues of policy, strategy and operations
- The regional early warning system should be fully operationalised and should be opened up to involve a broader base of stakeholders
- The capacity of the Organ and its directorate is wanting. More human resources need to be invested if this institution is to play a formative role in peace and security in the region
- The creation and/or operationalisation of the SADC Human Rights Commission, SADC Electoral Advisory Council (SEAC), Mediation Unit and the Disaster Management Unit must be prioritised
- The role of SADC-PF in SADC at large and its oversight on security issues in particular need to be revisited and completely overhauled
- Joint training, joint cross-border operations and exchange of information on cross-border crime is occurring, but has to be strengthened. SARPCCO's effectiveness is being impeded by corruption and capacity constraints at national level. These need to be dealt with through comprehensive SSG programmes at the national level

3 Botswana

POLITICAL OVERVIEW

Botswana, with a population of 1.84 million, is one of the oldest multiparty democracies in Southern Africa. Its political context presents the interesting paradox of a functioning democracy premised on a predominant party system, a weak opposition and civil society, and declining levels of political participation. The ruling Botswana Democratic Party (BDP) has won every election since independence in 1965 by overwhelming majorities, and continues to dominate the country's electoral politics. The smooth succession or peaceful transfer of political power from President Festus Mogae to President Lt Gen Seretse Khama Ian Khama on 1 April 2008 marked yet another milestone in Botswana politics, underpinning the virtues of Botswana's democracy, a process that still eludes some states in sub-Saharan Africa. The ideals and values of democracy are founded on regular free and fair elections, the principles of accountable government, responsiveness and transparency, the rule of law, an independent judiciary and legislature, political tolerance, and freedom of speech and association and democratic control of the security sector.

Botswana is widely regarded as a model for democracy in Africa, but little is done to deconstruct the model to understand the dynamics of its internal politics. It is one thing to talk about procedural and institutional democracy, which Botswana has firmly institutionalised, especially electoral democracy, but it is quite another to talk about democratic politics. Democratic politics is about how politics is conducted within a framework of democratic values and practices; it is about power relations between the state and its people.

In his inaugural address in April 2008, President Khama unveiled the four Ds underpinning his roadmap, namely democracy, development, dignity and discipline. To underscore his commitment to democratic politics, on the occasion of opening the Inter-parliamentary Union Conference, President Khama said:

... there can be no substitute for free, fair and credible elections, where people in any country should be allowed to elect representatives of their choice, and not have them imposed on them through rigged elections, brutalising opponents, military interventions, constitutional amendments to stay longer in power, and one man rule that goes on for decades.⁴⁸

But concern has been raised across the political divide in Botswana that the constitution affords the president extensive executive powers, yet the president is not directly accountable to the people through a direct election. Moreover, whereas the president enjoys certain immunities while in office, the constitution does not provide effective oversight structures to constrain the abuse of political power. The recent and much publicised case involving the secretary general of the ruling BDP, Gomolemo Motswaledi, and the president of the BDP and the Republic of Botswana, Ian Khama, is illustrative of this point.

In the run-up to the 2009 Central Committee elections and national elections, the BDP emerged as an extremely polarised party where candidates were fielded and positions were fought along factional lines.⁴⁹ Things came to a head after the party chairman, Daniel Kwelagobe, opposed the position proposed by the president that those holding central committee positions should not hold executive government positions. As a result of this lack of agreement, the president dropped Kwelagobe from his cabinet. The move precipitated severe polarity in the party where, in an unprecedented manner, party members attacked and de-campaigned one another in public, a trait uncharacteristic of the BDP. The Party Central Committee elections in July 2009 were contested on the

Barata Party and A Team tickets. As fate would have it, the Barata Party won all the central committee positions.⁵⁰

Using his presidential prerogative, President Khama nominated all additional members, as well as 77 members to work in the party structures at local level from the A Team. This was the start of a legal tussle between Motswaledi and Khama. The president suspended Motswaledi from the party. Motswaledi's suspension also barred him from contesting the elections of the Gaborone Central constituency as a parliamentary candidate of the BDP. Motswaledi filed a case with the High Court of Botswana to reverse the suspension, but lost. His appeal was not successful either, on the grounds that the president of the country enjoys immunity in his private and public capacities.⁵¹ Motswaledi lost the case, but what is material about the issue is that it has brought the constitution of Botswana into the spotlight because of its democratic deficit. People are beginning to question the democratic probity⁵² of a constitution that gives the president total immunity.

There is also concern in Botswana that officers who have served in the security sector, especially the military and police, are offered positions in the public and civil service. This is not unique to Botswana for military officers have the right to enter politics after retiring or resigning, but it has sparked a debate about the militarisation of state apparatus in Botswana as more and more high-profile former military officers have assumed strategic public and civil service positions. A case in point is that the president and vice-president are former commanders of the BDF.⁵³ It is premature to make an objective assessment of President Khama's performance in office as it is only two years since he assumed office, but there are perceptions that his administration is sliding into authoritarianism.⁵⁴ These perceptions, whether real or imagined, need to be addressed to inspire trust and confidence in the executive and in the security agencies.

Botswana's security threats are predominantly internal. These threats are indicated in table 1.

Botswana's conception of national security, however, has always been shaped by external conditions. The small size of the population, the long borders, and because the country always had to react to external threats such as SADF and Rhodesian raids have all robbed it of a consciously thought-out approach to national security from within.

Although the government has generally respected human rights there have been challenges, for example reports of abuse by security forces, poor prison

Table 1 Botswana’s threat perception

Internal	External
Non-military threats	Non-military threats
HIV/Aids Illegal immigrants Poaching Unemployment Income inequalities (a very high gini-coefficient) Water scarcities Power and energy shortages Single commodity or mineral-led economy (diamonds/minerals) Poverty Terrorism Declining life expectancy Road carnage Domestic crime Erosion of morals and values Corruption and white-collar crime Natural disasters Drought Foot and mouth disease	Health threats Cross-border crime Undemarcated borders Global financial crisis Escalating political turmoil in Zimbabwe and South Africa Globalisation
Military threats	Military threats
None	Zimbabwean army confronting Botswana over recent public statements on the legitimacy of President Robert Mugabe Diplomatic breakdown (highly unlikely) Namibian government pursuing Caprivi Secessionists (extremely unlikely)

Source Botswana National Security Strategy Review Seminar, 7–9 October 2008

conditions, lengthy delays in judicial processes, restrictions on press freedom, societal discrimination and violence against women.⁵⁵

CONSTITUTIONAL, POLICY AND LEGAL FRAMEWORKS

Botswana’s constitution was enacted in 1966. It is the supreme law of the land and establishes Botswana as a democratic state and law-abiding country. The constitution confers powers on the president to serve as commander-in-chief of

the armed forces. He therefore determines their operational use, and appoints, promotes and dismisses any member of the armed forces.⁵⁶ The constitution also authorises the president to delegate any of these powers to any member of the armed forces as he deems fit. The president enjoys sweeping powers, including sole authority in the deployment of armed forces, with no requirement to inform or obtain the consent of parliament.

The executive presidency in Botswana, although not directly elected by the people, symbolises the seat of political power. The president as commander-in-chief of the armed forces has the power to declare war. The president can appoint the vice-president, cabinet ministers, ambassadors and high commissioners, the commander of the Botswana Defence Force, and many others. The president controls the key apparatus of the state such as the army, police, and the Directorate of Public Service. The public service constitutes the administrative arm of the executive. Public interest organisations such as the Directorate on Corruption and Economic Crime, ombudsmen, and the Independent Electoral Commission also report to the president.

The Botswana Defence Force Act prescribes that:

there shall be established and maintained in Botswana a force to be known as the Botswana Defence Force, which shall consist of: a) the Regular Force of the Defence Force; b) the Defence Force Reserve, and may include a Volunteer Force of the Defence Force.⁵⁷

The BDF Act confers overwhelming powers on the president of the republic. These include:

- Section 4 of the act gives the president power over the regular and reserve forces
- Section 5 gives him/her power to assign to the army any task that he/she deems fit
- Section 6 allows the head of state to deploy the BDF outside the borders of Botswana
- Section 7 empowers him/her to send with or without his/her consent any soldier or officer outside the country for military training
- Section 8 gives the president power to determine members of the Defence Council⁵⁸

Botswana does not have a written policy on defence or a national integrated security strategy. These would go a long way towards providing a strategic framework for the development of the military and the security sector as a whole.

Section 6 of the Botswana Police Act stipulates that the police force shall be employed in and throughout the country to protect life and property, prevent and detect crime, repress internal disturbances, maintain security and public tranquillity, apprehend offenders, bring offenders to justice, duly enforce all written laws with which it is directly charged, and generally maintain peace. The police shall also perform such military duties within Botswana as may be required of it under the authority of the president as commander-in-chief of the armed forces.

The constitution upholds international standards prohibiting torture, inhuman or degrading punishment or treatment. Yet, the constitution also makes provision for corporal punishment and the death penalty.

The code of conduct binding prison officers is contained in the Prisons Act and in standing orders issued by the commissioner. The act contains a list of offences, including mutiny, desertion and related actions, bribery, assault, corruption, disobedience and various forms of prohibited actions.⁵⁹

Certain policy issues within Correctional Services require urgent attention, such as the position on HIV/Aids and the high incidence of male rape in prisons. Homosexuality is illegal under Botswana's Penal Code. There is a policy of not providing condoms to prisoners, as this apparently condones sexual activity among prisoners.⁶⁰ Furthermore, anti-retroviral treatment is not supplied to foreign prisoners.⁶¹

In terms of the regulations, private security companies in Botswana are governed by the Control of Security Guards Services, Act 28 of 1984 (CSGSA).⁶² CSGSA was promulgated to provide for the proper and effective control and regulation of concerns engaged in providing security guards and matters connected with this. The Reservation of Security Guard Services for Citizens Order of 24 July 1998 complements CSGSA and is important in ensuring that the industry is Botswana citizen-owned. Before the enactment of the Statutory Instrument of 1998, international companies dominated the private security industry. For this reason the Statutory Instrument allowed companies to register only if they were citizen owned. International private security companies that were already in operation before the enactment of the Statutory Instrument Act

were not affected. These companies are still in operation in Botswana and find it very difficult to secure tenders for the provision of security from the Botswana government, as the requirement of being owned by a Botswana citizen is one of the conditions for bidding for such tenders.

According to CSGSA,

No person shall, without holding a security service licence – (a) engage in or carry on the business of providing security guards for any other person or persons; or advertise himself or hold himself out in any other manner whatsoever as a person engaged in or carrying on any such business.⁶³

Failure to adhere to this section attracts a fine not exceeding P2 000 (+/-US\$291.71) or, in default of payment, imprisonment for a term not exceeding one year. For continuing offences, the liability is an additional fine not exceeding P500 (+/-US\$72.93) for every day the offence continues after the first day.⁶⁴ In terms of the restriction on the licence holder providing security guards, no holder is allowed to provide a security guard for any person if the security guard has a conviction within or outside Botswana or has criminal proceedings pending against him or her within or outside Botswana. Any knowledge or suspicion of such a conviction or pending criminal proceedings attracts criminal conviction on the part of the licence holder.⁶⁵

As a result of the shortcomings of CSGSA, Botswana drafted the Regulation of Private Security Bill of 1998,⁶⁶ which, as of February 2010, has yet to be tabled before parliament. The bill is still with the attorney-general's chambers. Among other things, the bill seeks to establish a private security industry regulatory board, which will be responsible for regulating the industry. This board will be a 'body corporate, capable of suing and being sued in its own name and, subject to the provisions of the Act, of doing or performing all such acts or things as bodies corporate may, by law perform'.⁶⁷

With regard to gender and security, the constitution of Botswana forbids discrimination on the grounds of 'race, place of origin, political opinions, colour, creed or sex'.⁶⁸ Traditionally and until very recently (2008) women have been the victims of discrimination and were excluded or discouraged from participating in services related to the security and justice sector, such as the Botswana Defence Force. Spousal rape, for example, is not recognised as a crime.⁶⁹ No record could be found of an official policy preventive of sexual violence within prisons.

An area where criminal justice processes must improve is in child justice. There is a general lack of uniformity in statutes affecting children's welfare. There is also an absence of support centres for victims of violence in the criminal justice system. The minimum age of criminal responsibility is eight.⁷⁰ The Children's Act defines a child as being of an age below 14 and a juvenile as being between 14 and 18. Children can be sentenced to imprisonment from the age of 14.⁷¹ A sentence of death shall not be pronounced on anyone if it appears that the offender was under the age of 18 at the time that the crime was committed.⁷² A sentence of corporal punishment is limited to six strokes if the person is under 18 years of age.⁷³

This brief review of Botswana's policy and legal frameworks highlights some of the gaps that could be addressed through a consultative review process. This would facilitate the rebuilding of trust between the security sector and the citizens.

DEFENCE

At independence in 1966, Botswana inherited a fragile and insecure state that was predicated on the goodwill of its neighbours. Owing to its open-door policy of accommodating bona fide political refugees, it provoked a backlash from white-minority-ruled states. In response, the Botswana Defence Force (BDF) was established in 1977 by an act of parliament.⁷⁴ Botswana therefore established a military only eleven years after independence, preferring to spend its resources on other development issues. The BDF was established to ensure the defence of Botswana and to guarantee its territorial integrity. It was formed to serve as a deterrent, rather than offensive force. The nucleus of the new military – 132 men – was drawn from the Botswana Police Mobile Unit.⁷⁵ Ian Khama was one of those first recruits, holding the rank of brigadier general. The BDF, although comparatively small, grew quickly from its original size to around 6 000 in the 1990s and in 2004 had around 12 000 personnel.⁷⁶

The Botswana Defence Force Airwing was also formed in 1977 and its main base is in Molepole. In 2004 it consisted of around 500 personnel. The 2010 Military Balance estimates the current defence force (military and air) at 9 000.

Henk notes that the:

BDF Air Arm was significantly upgraded in 1996 by the acquisition from Canada of thirteen CF-5A/D Freedom Fighters, Botswana's first modern combat aircraft. This was followed the next year by the addition of three

surplus US Air Force C-130B transport aircraft. These two systems represented a quantum increase in Botswana's air combat and airlift capability. Botswana also acquired new ground force equipment in the mid-1990s, including a twelve-gun battery of new 105 mm howitzers and twenty Alvis Scorpion light tanks from the United Kingdom, along with fifty Steyr-Daimler-Puch SK 105 light tanks from Austria.⁷⁷

The Botswana Defence Force has no secretariat; nor is there a separate Ministry for Defence. The Vision 2016 document noted the need for a secretariat as a civilian link between the BDF and the Minister.⁷⁸ Defence affairs are 'handled by a minister in the State President's Office who also has responsibility for the public service and the Botswana Police Service'.⁷⁹

The functions of the BDF are overseen by the Defence Council, which is responsible for the control, direction and general superintendence of the force. Its members are appointed by the president. The Defence Council is concerned mostly with welfare issues of the military, such as accommodation and complaints from officers.

Since the military does not have unions, the Defence Council serves as the union. In the past it has reinstated soldiers who were laid off. At the instigation of the Defence Council the Defence Command and Staff College was formed. It was also thanks to the council that women were admitted into the army in 2008. There are currently 50 women in the defence force. The Defence Council is the de facto Ministry of Defence.⁸⁰

In 2008, after a decision taken by the Defence Council in 2004, the BDF established a Defence Command and Staff College to train and develop officers to lead units in the BDF.⁸¹ The BDF is generally considered a highly professional, disciplined and well-educated force but its deployment internally has been a matter of concern.

POLICE

Prior to August 2009 there were two main police forces in Botswana:⁸² the Bechuanaland Mounted Police, which was founded by the British colonial administration at the outset of the Bechuanaland Protectorate in the mid-1880s; and the Tribal Police Force, which was brought into existence as an innovation by Kgosi Khama II of Bangwato, who ruled from 1832 to 1834.⁸³

Bechuanaland Mounted Police evolved into a fairly conventional colonial constabulary as the Bechuanaland Border Police, then as the Bechuanaland Protectorate Police, before becoming the Botswana Police Force at independence in 1966 and, ultimately, the Botswana Police Service (BPS).⁸⁴ The BPS, established under the Botswana Police Act of 1987 and operating under the Ministry for Presidential Affairs and Public Administration, has primary responsibility for internal security.⁸⁵

Tribal police were introduced for patrol or security reasons. The immense fear exerted on the Bangwato by agents of the Difaqane Wars may have led Khama II to appoint a man to spy on the enemy from a hilltop and warn the residents of the village about the approaching enemy.⁸⁶ The Tribal Police evolved to become a statutory organisation, established under the Local Police Act, which fell under the Ministry of Local Government,⁸⁷ with law enforcement responsibility mainly in the rural areas of the country and working closely with the Customary Courts.⁸⁸

The Police Department is divided into three divisions, namely North, South and Central, headed by a divisional commander. Police services are divided into eight branches, namely General Duties, Criminal Investigation Department, Special Support Group, Special Branch, Traffic, Telecommunications and Transport, Police College and Departmental Management.⁸⁹

Police officers total 6 497, which makes a 1:2500 ratio of police to civilians. The BPS has a total enrolment of 17.8 per cent female police officers. Senior management positions comprise 31 officers, of whom six are women.⁹⁰

The BPS has undergone a series of reforms from the SWOT and GAP analysis to the first Long-Term Corporate Development Strategy (1997–2003) and Corporate Development Strategy (2003–2009).⁹¹ The Long-Term Corporate Development Strategy committed itself to meeting four goals, including crime reduction, community policing, human resources, and facilities and support. The Corporate Development Strategy was committed to ‘respecting, protecting and upholding the fundamental rights and freedoms of the individual’. The police conduct public opinion surveys to promote good relations and communication with the public.⁹²

In April 2009, the BPS and the Local Police Service were merged. The Local Police Services evolved from the Tribal Police (above).⁹³ The Local Police were established under the Local Police Act and fell under the Ministry of Local Government, with law enforcement responsibility mainly in the rural areas of the country and worked closely with the customary courts.⁹⁴

The merger, which is intended to ensure better coordination of policing services and improve utilisation of resources, has encountered challenges. These include declining capacity through resignations, retirements, and departmental transfers and logistical bottlenecks caused by inadequate housing and office accommodation. The merger has also seen the delayed takeover of non-policing functions of the Local Police by the Ministry of Local Government and increased functions for the BPS.⁹⁵ The merger has had an adverse effect on the functioning of customary courts, as the role played by the Local Police has not been adequately taken up by the BPS.⁹⁶

CORRECTIONAL SERVICES

The Department of Prisons and Rehabilitation (DPR) manages correctional facilities and the correctional system in Botswana. The DPR was formerly under the authority of the Ministry of Labour and Home Affairs, but was reportedly transferred in August 2009 to the authority of the Defence Council (headed by the minister of defence, security and justice), which is a division of the Office of the President.⁹⁷ This change is not yet reflected in governmental sources of information, but has been referred to in media reports.

In Botswana, there are 22 prisons and one holding centre for illegal immigrants, the Dukwe Centre. Prison Services employs 1 943 people. The overall prison capacity is 3 994.⁹⁸ As of 2 September 2009 the prison population was 5 216. The population for previous years as indicated in table 2.⁹⁹

Management of the Dukwe Centre and the Dukwe Refugee Camp falls under the authority of the Department of Immigration and Citizenship, which is a division of the Ministry of Labour and Home Affairs. The centre is governed

Table 2 Botswana prison population

Year	Total
1998	6 455
2000	6 742
2002	6 102
2004	6 105
2006	5 969

in accordance with the Prisons Act. The centre has capacity to hold 500, with separate facilities for women and men. Children are detained with their parents, and do not have access to education or recreation facilities.¹⁰⁰

The Ikago Centre of the School of Industries in Molepolole is a rehabilitation centre, accommodating children who have been convicted and given a custodial sentence. Ikago was set up under the Children's Act, which provides for the establishment of youth shelters for juveniles who have been arrested and are awaiting trial, and schools of industry for the reception, care and training of 'juvenile delinquents' in specific skills.¹⁰¹ Such facilities fall under the authority of the Ministry of Local Government. Ikago became operational in 2002 and remains the only custodial facility in the country for children who are in conflict with the law. It currently takes only male children between the ages of 14 and 18.¹⁰² The centre has capacity for 100, but in 2008 housed only 32 children.¹⁰³ There are no facilities for female children.¹⁰⁴

The arrival of illegal immigrants from neighbouring countries, especially Zimbabwe, has presented the criminal justice system with new challenges. Law enforcement agencies, particularly the police and the judiciary, are unable to cope with the level of crime. The courts are reported to experience increased backlogs and staff shortages, especially prosecutors, making the constitutionally guaranteed right to a fair trial difficult to implement. A comparison of crime statistics indicates disproportionality between the high number of people apprehended by the police (18 000 to 20 000 per year)¹⁰⁵ and the small number sentenced to imprisonment (the total prison population being roughly 6 000).

In relation to other actors in the security and justice sector, prisons do not receive sufficient funding to operate optimally. Complaints in the media indicate that prison conditions are generally poor and they are not adequately equipped to ensure successful rehabilitation.¹⁰⁶ The commissioner of prisons has acknowledged that organisational structures are inefficient and that staff accommodation is poor.¹⁰⁷ Officers often resist transfers to rural areas, leaving these rural prisons even less equipped.¹⁰⁸ The prisoners-to-official rate is approximately 25:1, when it should be 5:1–6:1.¹⁰⁹ It is uncertain how much of the 2010 budget is allocated to Prison Services. Government has set a trend throughout the years of prioritising funding in favour of the military.

These security and justice development programmes are under way:

- Computerisation of records system in prisons

- Implementation of a pre-release training policy
- Improved monitoring of rehabilitation programmes
- Plan to address congestion in prisons
- Review of prison standing orders
- Improved provision of access to HIV/Aids counselling and anti-retroviral treatment for prisoners
- Intensified training of prison officials, focusing on human rights training
- Review of polices and establishment and implementation of clear policies¹¹⁰

PRIVATE SECURITY

Botswana's private security industry is a burgeoning business, which has grown to accommodate the glaring gaps in the security market.¹¹¹ The industry is run by the controller of security guard services, who is a public officer designated by the minister of defence, justice and security.¹¹² In recent years, the Botswana government has sought to confine the industry to Botswana citizens through the Reservation of Security Guard Services for Citizens Order of 24 July 1998 (otherwise known as the Statutory Instrument of 1998). Section 2 of this order provides that 'only persons who are citizens of Botswana or companies which are wholly owned by citizens of Botswana shall be issued with licences in terms of the provisions of the Control of Security Guard Services Act'.

According to the controller of security guard services, which falls under the Office of the Presidency, 789 private security companies are licensed to operate in Botswana.¹¹³ Of this number, about 150 companies are active. This is because the industry is lucrative but the market is relatively small.

The industry is regarded as essential to complementing the work of the Police Force. According to the Draft White Paper on Privatisation in Botswana,¹¹⁴ the task force (established by the Ministry of Finance and Development Planning) recommended that the government should consider security services for privatisation or commercialisation.¹¹⁵ Since then, a considerable number of tenders have been advertised in the Botswana Government Gazette for the provision of security services in government, both local and provincial. The most striking feature of government tenders is that only bidders who have pre-qualified in terms of having a valid licence and companies wholly owned by Botswana citizens are eligible to submit tender offers.

The laws of Botswana prohibit the use of firearms by private security guards. Although there are few cash-in-transit heists, G4S Botswana is the only company that is involved in cash in transit and uses a smoke box to transport cash (it releases ink to stain the money in the event of robbery). This has acted as a deterrent to would-be robbers.

Despite the global demand by international private security and military companies for third-country nationals, there have been no reports of recruitment of Botswana citizens to work beyond the borders of Botswana, especially in volatile situations such as Iraq and Afghanistan. There is currently no law that regulates the involvement of Botswana citizens in private security and related activities outside the country.

INDEPENDENT OVERSIGHT AND ACCOUNTABILITY

Under the constitution, the National Assembly is vested with sovereign and legislative powers to enact laws that encourage peace, order and good governance of the country. The assembly is also empowered to authorise and approve the expenditure of public funds as well as provide oversight of government activities.¹¹⁶

In Botswana, oversight of the security sector is attained mainly through parliamentary committees such as the Public Accounts Committee, Finance and Estimates Committee, Foreign Affairs, Trade and Security Committees, Intelligence Committee, Committee on Population and Development, and Labour Relations Committee. The importance of parliamentary committees cannot be over-emphasised. Whereas party discipline is at its maximum when parliament meets in plenary, parliamentary committees have provided a platform where less partisan, and therefore more focused, oversight of the executive branch can be performed. These mostly cross-party committees have the advantage of devoting more time and specialist resources to undertaking analyses and discussion of more in-depth policy issues, as well as extracting information, holding accountable the executive and focusing attention on the effectiveness of its administration, especially in expenditure of public money. As a result of these strengths, parliamentary committees have often achieved better quality oversight than parliament sitting in plenary.¹¹⁷

Under Botswana's parliamentary model, executive oversight of the security sector is achieved through parliament. This is because the executive accounts

for and justifies its management decisions to parliament. The executive branch represents the seat of government.¹¹⁸

Parliamentary committees, as an extension of parliament, are important because they facilitate deeper discussion of issues, and are better suited to discharging the oversight responsibilities than the full House. There are four types of parliamentary committee: the Committee of the Whole House,¹¹⁹ standing committees,¹²⁰ sessional select committees,¹²¹ and special select committees.¹²² According to the standing orders of parliament, the committees have:

powers to send for papers, persons and records and move from place to place, and also have powers to sit after the adjournment of the House, and have to report to the House from time to time.¹²³

Most of these committees meet *in camera*, which has not promoted their public nature, and the media have not been able to publicise the deliberations of these committees.

The effectiveness of parliamentary committees in maintaining oversight of the executive lies not so much in their numbers,¹²⁴ but in their capacity to hold government accountable. Perhaps a major flaw in the committee structure of the Botswana parliament is the non-existence of a parliamentary budget committee. Parliament cannot hope to influence a budget if they do not have a say in its formulation or the expertise to know how it is prepared. At present the executive, led by the Ministry of Finance and Development Planning, exclusively prepares the budget. With the exception of those who have served as civil servants, most MPs have little to contribute to the budget vote when it is presented to parliament.

The Public Accounts Committee (PAC) is said to be the watchdog on government spending. The PAC is a parliamentary committee constituted under Standing Order No 95. According to Section 124 of the constitution, the PAC receives audited accounts of central and local government (including the police and military) and of some parastatal organisations from the auditor-general for consideration. Its mandate is to ensure strict compliance with financial regulations and procedures of accounting for public monies and stores. The accountant prepares government accounts and presents a report to the auditor-general, who in turn ascertains that the funds were spent in accordance with government procedures. In addition to a financial audit, the auditor-general

is empowered to conduct a performance audit, and makes representation to the appropriate minister. After the PAC has looked at the audited accounts, it submits its report with recommendations to the minister of finance, who will have them laid before the National Assembly.

Perhaps the biggest limitations of the PAC are that it does not have powers to surcharge wrongdoers, or to call upon ministers to share the political responsibility of accounting for their ministries. In the past, the PAC sat in camera, but it has since resolved to make its hearings public.

The work of the PAC is aided by the work of the equally important, but lesser known Committee on Government Assurances, which is charged with following up on commitments and promises given voluntarily by ministers on the floor of the House in reply to questions at question time and other scheduled appearances in the House.¹²⁵ On the whole, the vigilance of this committee is constrained by the weak presence of the opposition in parliament.

The Committee on Foreign Affairs, Trade and Security occupies a strategic position in defining the country's foreign, trade and security policies.

Standing orders of parliament mandate the committee on foreign affairs, trade and security to interact with the ministry in formulating the country's foreign and security policies, but this is not the case. It appears that there is an unwritten rule that defence and security are no-go areas. Participants at the Executive Course in Parliamentary Oversight of Defence and Security in Botswana in 2006 highlighted the need to find an equitable balance between secrecy as required by security operations, and the accountability and transparency required of a democracy.¹²⁶

The judiciary (High Court, Appeals Court and Judicial Service Commission) stands as an independent arm of government that guarantees not only the supremacy of the constitution, but also equality before the law. Botswana has an established tradition of upholding the rule of law, and non-political interference in the operations of the legal system. The executive is expected to uphold the rule of law, and to enforce court decisions. On the whole, Botswana has fared well in keeping a relatively clean human rights record. However, there are instances where human rights issues have come into serious question.¹²⁷

The auditor-general's office is statutory and derives its authority from the constitution. Unlike the ombudsman and the Directorate on Corruption and Economic Crime, which report to the president, it reports directly to parliament through the PAC. The position of auditor-general is entrenched in

the constitution and, like those of the attorney-general and secretary of the Independent Electoral Commission, he or she can be removed from office only by a commission. As a result, the auditor-general is able to report freely without fear or favour.

In line with strict budgetary control, accounting and audit, security sector accounts do not escape the auditor-general's examination. Military budgets and expenditure are subject to public scrutiny and accountability by the auditor-general and the PAC. Although the office of auditor-general is often limited by shortage of technical and skilled staff, it produces its reports annually and makes them available to parliament for discussion. However, the opposition is often ineffective in picking these matters up and debating them effectively in parliament. Moreover, the public and civil society take little interest in these matters, and they do not become issues in the public domain. The auditor-general's report that is tabled before the PAC is ammunition for the opposition to take government to task on its spending of public funds.

An act of parliament created the office of ombudsman in April 1995, but the office was established only in December 1997. The ombudsman is empowered to enhance accountability of public administration and check on maladministration. The office of ombudsman gives ordinary citizens redress in cases of 'administrative arbitrariness' perpetrated by government departments.¹²⁸ The president, in consultation with the leader of the opposition, appoints the ombudsman. The mode of operation is that aggrieved persons lodge their complaints with the office and the ombudsman investigates these cases and makes recommendations for remedial action.

In terms of security governance, the ombudsman is not allowed to investigate 'matters between the government of Botswana and foreign powers and international organisation'. Nor is he or she allowed to investigate 'security matters and complaints by public offices regarding appointments made by the President within the Public service ... [and] orders to Botswana Police and Botswana Defence Force'.¹²⁹ Perhaps more fundamentally, contrary to the practice in other Commonwealth countries such as South Africa, Lesotho and Australia, where the ombudsman reports directly to parliament, in Botswana he or she reports to the president. Ultimately, it is only at the discretion of the president¹³⁰ that the report of the Ombudsman is tabled in parliament.

An act of parliament established the Directorate on Corruption and Economic Crime in 1994. The directorate is empowered to investigate cases

of alleged corruption, to prevent corruption, and to embark on an educational campaign to expose the ills of corruption. It was created out of the realisation that while Botswana is one of the least corrupt countries in the world,¹³¹ it need not be complacent, but must be vigilant, proactive and thwart corruption from the beginning. Perhaps the most instructive act of corruption and malpractice was the Botswana Housing Corporation scandal of 1992, in which government lost millions of pula in corrupt practices. Equally disturbing was the National Development Bank scandal in which high-ranking government officials corruptly benefited from write-offs of their loans while the bank experienced serious financial losses. Another related incident concerns the alleged illicit land deals in Mogoditshane and other peri-urban areas in which senior government officials were implicated.

The Prisons Act creates two mechanisms of oversight of prisons, namely prison visiting committees (PVCs) and official visitors.¹³² A PVC is appointed for each prison, the members of which used to be appointed by the minister. The PVC is allowed access to prisons, may conduct interviews with prisoners and may check that basic needs are met. The PVC is appointed to visit prisons at least every three months¹³³ and submits its report to the commissioner of prisons. The PVC's mandate includes the ability to enquire into a complaint or request by a prisoner and then to consult the officer in charge about this complaint. Ditshwanelo reports that quarterly visits are mostly carried out when due. However, reports, findings and recommendations are not made public and there is no duty to make such records public, making independent monitoring of the implementation of recommendations problematic.

In addition to the PVC, official visitors – judges, magistrates or any persons appointed by the minister for this purpose – are allowed access to records, all parts of prisons and prisoners to inspect food, basic conditions and to enquire into complaints by prisoners. A record is kept by the officer in charge and submitted to the minister. Again, there is no duty to publish records or recommendations.

The strength of these oversight mechanisms is that there is a legal framework for external monitoring to be carried out. But this framework is inadequate as far as the commissioner is able to refuse entry to external visitors, and the public has no means of obtaining insight into reports and recommendations by prison visitors. Another weakness lies in the practical implementation of the provisions of the legal framework. There do not seem to be clear guidelines or

strategies supportive of the oversight mechanisms created by law. Reports indicate that recommendations are not always adhered to, since prison conditions are generally below international standards, and prisoners are often subjected to ill treatment.¹³⁴

In internal oversight, infringements are dealt with in two ways, depending on the rank of the officer in question. If an offence was committed by a junior or subordinate officer, the commissioner – or a senior officer authorised by him – may enquire into the alleged offence and, if the accused is found guilty, may award one or more of a range of punishments.¹³⁵ If an offence was committed by a senior officer, the permanent secretary to the president may appoint a board of enquiry to investigate the allegations. A record of the board's findings must be submitted to the permanent secretary, who will decide on the punishment. Disciplinary punishments include a fine, reduction in rank, dismissal or a reprimand.¹³⁶

If an official is dissatisfied with the outcome of a disciplinary action, he or she may appeal to the Prisons Council, which may dismiss or uphold the finding. The Prisons Council is created under Sections 139 and 140 of the Prisons Act. The Prisons Council does not appear to have any other function than to deal with such appeals, unless it is instructed by the minister to address a particular issue.

The Regulation of Private Security Bill of 1998 (still under discussion) provides for the appointment of the regulator of private security service, who is a public guard designated by the minister responsible for defence, justice and security. The bill, however, does not define a 'public guard'. Among other things, the bill defines 'private investigator', 'security equipment', 'security guard', 'private security service', and 'private security'.¹³⁷ When the bill becomes the law, it will no doubt shape the private security industry in Botswana significantly.

ROLE OF CIVIL SOCIETY

In light of the weak opposition that characterises Botswana's political process, the role of civil society is important. Civil society needs to emerge as a bridge-builder that facilitates dialogue between the state and the people. However, the nascent civil society in Botswana has been relatively ineffective, and has not taken up the challenge of expanding the frontiers of democracy by taking a part in shaping public policy. MPs in Botswana remain unconnected to civil

society. Yet civil society, including the media, by its nature as a watchdog of people's rights, is strategically located to ensure that governments are transparent and accountable.¹³⁸ However, there are other areas in which civil society has achieved measurable results.¹³⁹

The apathy of civil society in Botswana may be explained by the political and economic stability that has prevailed in the country since independence.¹⁴⁰ Since then Botswana has maintained an open political system, and its people have not been subjected to political repression. Unlike other countries in the region, where mass democratic movements¹⁴¹ rallied civil society organisations to unseat undemocratic governments, civil society in Botswana remained relatively passive and uninterested in politics. Civil society has never had reason to mobilise its people for political ends.

But the role of civil society must be strengthened through capacity building to improve accountability and transparency in the public and private sectors and to play its part as a watchdog of good governance.¹⁴² These entities have a presence in Botswana:

- United Nations High Commissioner for Refugees (UNHCR): The UNHCR is instrumental in monitoring the activities and conditions of Dukwe Centre for detention of illegal immigrants. The UNHCR, in partnership with the University of Botswana, provides legal assistance to refugees and immigrants.¹⁴³ Other UN agencies (for example UNICEF, UNAIDS, UNFPA and WHO) support Botswana's continuing development challenges
- International Committee of the Red Cross (ICRC): The ICRC is a recognised independent prison visitor in Botswana and is allowed access to prisons
- Ditshwanelo (Botswana Centre for Human Rights): It provides legal assistance, and advocates for the protection of human rights, especially those of minority groups. It also monitors conditions of detention and implements strategies to improve accountability of government. Ditshwanelo is very active and its work is widely respected
- Bonela (Botswana Network on Ethics, Law and HIV/Aids): This organisation focuses on the prevention and spread of HIV/Aids in Botswana. It lobbies for the provision of condoms in prisons¹⁴⁴

There are no organised trade unions for employees in the security and justice sectors.

The University of Botswana is the only university in the country. Two departments in particular assist in providing access to justice and developing the justice and security sector through undertaking research projects, studies, polls and publishing literature on related matters. The Centre for Strategic Studies, which falls under the Faculty for Political and Administrative Studies, is a member of the Southern African Defence and Security Management Network (SADSEM). Its aim is to make a strategic contribution by focusing on the enhancement of democratic management of defence and security and strengthening regional cooperation mechanisms. Organised courses are attended by members of parliament, senior military, police, prisons, immigration, government officials and members of civil society and NGOs in Botswana. Executive courses offered by the centre include civil-military relations, defence and security management, managing multinational peace missions, SSG and parliamentary oversight of the security sector. These courses provide a forum for the exchange of ideas which will form the basis for democratic governance and SSG or reform.¹⁴⁵ The Botswana Legal Assistance Centre, which forms part of the Law Faculty of the university, provides free legal aid to persons in civil matters, but not criminal matters.

Religious organisations and leaders are not particularly known for providing or assisting in access to justice. Locally, Love Botswana is the best known for its outreach missions. Studies have shown that the public generally prefer to approach traditional leaders for assistance in matters requiring the exercise of justice.¹⁴⁶ However, religious leaders and organisations are encouraged to participate in rehabilitation and reintegration programmes in prisons. The Prisons Act allows for ministers of religion to visit prisoners who desire their services and they may hold religious services at specified times and places.¹⁴⁷

KEY CHALLENGES AND RECOMMENDATIONS

Compared to other countries in the region, Botswana's security sector fares well. It displays a marked professionalism and is not prone to excessive human rights violations. Civil-military relations are established in Botswana, but these can be more clearly articulated in a policy framework. There are notable shortcomings in its legal and institutional frameworks and in its capacity to deliver effective services. Botswana does not have a national integrated security policy or a policy on defence. Oversight of the security sector remains relatively weak

and there is a lack of a civilian-led secretariat of defence and an independent Ministry of Defence. Civil society in Botswana is also weak and rarely engages in monitoring the security sector, with the exception of monitoring human rights violations. We therefore recommend that Botswana:

- Develop the necessary policy and legal frameworks to effect improved governance
- Bring about constitutional reform to enhance the separation of powers and through it strengthen the institutional autonomy of parliament to hold the executive accountable
- Strengthen and reform the parliamentary committee system and enhance SSG literacy among parliamentarians
- Enhance media and civil society engagement in security sector discourse
- Improve human resources, both quantity and quality within the prison sector
- Keep track of and address complaints about human rights abuse by security sector personnel

4 Democratic Republic of Congo

POLITICAL OVERVIEW

The Democratic Republic of Congo (DRC, previously known as Zaïre) is a single decentralised state that consists of the city of Kinshasa and ten provinces: Bandundu, Lower Congo, Equateur, Western Kasai, Eastern Kasai, Katanga, Maniema, North Kivu, Eastern Province and South Kivu. It has an estimated population of 60 million people. It is rich in resources (copper, cobalt, diamonds, gold, timber, coltan, oil, arable land and water). Yet the DRC remains one of the poorest countries in the world. This is largely owing to its political history.

The DRC gained its independence from Belgium in 1960. Since then it has been marred by political instability. In 1965, Joseph Desire Mobutu seized power in a military coup. President Mobutu soon abolished the constitutional dispensation that provided for the separation of power between the president, the prime minister and the parliament,¹⁴⁸ and created a one-party state led by the *Mouvement populaire pour la Revolution* (MPR). Mobutu's dictatorship was based on two pillars, repression and corruption. To preserve and sustain his reign, he relied on the security forces, especially the intelligence services, and a system of extensive patronage.

In April 1990, Mobutu announced the end of the one-party-state system and the establishment of a multiparty democracy. Two years later, a national conference was convened in Kinshasa to ensure a successful transition to democracy. This process, along with the conflict in neighbouring Rwanda, saw the progressive unravelling of the Mobutu regime.

In the east of the country, soldiers from the former *Forces armées rwandaises* (FAR) and Hutu militias (Interahamwe), who sought refuge in Eastern Zaïre after the Rwandan genocide, launched attacks against Rwanda. Ugandan rebels of the Allied Democratic Forces (ADF) and those of the National Army for the Liberation of Uganda (NALU) were also operating in the east. In October 1996 Rwanda and Uganda invaded Zaïre in an attempt to neutralise their own rebel groups. Soon afterwards, Rwanda and Uganda backed a new Congolese movement called *Alliance des forces démocratiques pour la libération du Congo-Zaïre* (AFDL), under the leadership of veteran rebel leader Laurent Desire Kabila.

The AFDL advanced to Kinshasa and the largely ill-disciplined, unpaid and ill-equipped soldiers of the *Forces armées zaïroises* (FAZ) refused to engage in combat with them. On 17 May 1997, AFDL rebels seized Kinshasa and Laurent Desire Kabila proclaimed himself the new president of the Democratic Republic of the Congo.¹⁴⁹ One year after his accession to power, Kabila fell out with his Rwandan and Ugandan allies and asked them to leave the country. Rwandan and Ugandan troops initially withdrew from the DRC, but immediately undertook a new invasion from the east of the country.

Rwandan and Ugandan commandos were about to topple Kabila's government in Kinshasa when a military intervention from Angola and Zimbabwe saved the regime. Later, Chad and Namibia also intervened in support of Kabila. At one point in the conflict, all DRC's neighbours were involved directly or indirectly in what became a regional war.¹⁵⁰ Kabila was assassinated in 2001 and his son, Joseph Kabila, became the head of state.

In December 2002, the Global All Inclusive Peace Agreement was signed in Pretoria between the Congolese government, rebel groups, civil society and political parties. The agreement envisaged the installation of a two-year transition period, at the end of which presidential, legislative and provincial elections were to be scheduled. It included provisions for the formation of a transitional government, parliament and new security forces, reflecting the political, regional and ethnic diversity of the country. The transitional government was

established in 2003, headed by Joseph Kabila and four vice-presidents, among whom were two former rebel leaders, Jean Pierre Bemba of the *Mouvement de Liberation du Congo* (MLC), and Azarias Ruberwa of the *Rassemblement congolais pour la démocratie* (RCD).

The transitional government, with the assistance of the international community, embarked on a process of DDR and the formation of the new Congolese military, *Forces armées de la République démocratique du Congo* (FARDC), through a process of *brassage*. Although the transitional government and the presence of the United Nations Mission in the DRC (MONUC) restored peace to most of the country, reform of the security forces, especially the military, has been problematic. This was largely owing to poor conceptualisation of the DDR process, embezzlement of soldiers' salaries by military commanders, and limited financial resources.

The first democratic election in four decades was held in 2006. The transition to a democratically elected government, however, has not completely removed the factionalism and violent clashes of the past. Violent clashes broke out in the streets of Kinshasa in March 2007 between troops loyal to Jean Pierre Bemba and Kabila's government troops. Bemba was later exiled to Portugal and, in 2008, arrested in Belgium by the International Criminal Court. Violence also continued in the eastern DRC, particularly in the Kivus where the *Congrès national pour la défense du peuple* (CNDP), the *Forces démocratiques pour la libération du Rwanda* (FDLR) and other militia continued their destabilisation campaign. In 2009 the CNDP, after a joint FARDC and Rwandan government military exercise, capitulated and were incorporated into the FARDC.

The security situation remains precarious in the DRC. It will grow in intensity as the country gears up for elections in 2011. Continued violence in the east, conflicts in Bas Congo and Equateur, incomplete DDR processes, lack of comprehensive SSR implementation, poor governance and large-scale corruption, as well as highly fractured, ill-disciplined and poorly resourced military and police forces, do not bode well for political stability and development in this country.

CONSTITUTIONAL, POLICY AND LEGAL FRAMEWORKS

The constitution of the DRC was adopted by the transitional legislature on 5 May 2005 and was ratified by the electorate in a referendum on 18 and 19

December 2005. It came into effect on 6 December 2006. The constitution is the fundamental, supreme law of the DRC and provides for institutional law and human rights law.

Executive power is vested in the president (as head of state and commander of the armed forces) and prime minister (as head of government). The Congolese constitution provides for a clear separation of powers and control mechanisms. The president serves a term of five years, renewable only once. He or she is the guardian of the constitution, national independence, territorial integrity, and national sovereignty. He or she ensures the performance of international treaties entered into by the state and the running of national institutions, together with the government. The constitution notes that the president has to cooperate with the prime minister in the areas of foreign affairs, security and defence. These areas were previously the exclusive preserve of the president. A bicameral parliament came into effect with the transition in 2003. Parliament enjoys legislative supremacy and the power of oversight over the executive.¹⁵¹

The constitution guarantees individual and collective freedom, in particular freedom of movement, enterprise, information, association, of procession and demonstration, subject to the law, public order and morality. It makes provision for an independent judiciary. Judicial power is exerted by the Supreme Court, appeal courts, lower courts and tribunals, civil and military, as well as by the public prosecutor's office.

Several fundamental principles of criminal procedure are set out in the constitution. These include guarantees of due process during arrest and detention, prohibition of retroactive laws, presumption of innocence, and right to a fair trial.¹⁵²

The constitution establishes these security organs: Armed Forces, National Defence Council and the National Police Force. The Armed Forces of the DRC are subject to civil authority and placed under the jurisdiction of the ministry responsible for national defence. The Congolese National Police Force and the Armed Forces, according to the constitution, are both apolitical. Human resources at all levels of the armed forces should be constituted in such a way that a fair and balanced representation of all the provinces is achieved. Members of the security services, however, may not form trade unions or become members.

The Global and All Inclusive Peace Agreement laid the basis for DDR and SSR in the DRC because it contained the objective of the re-establishment of

state authority over national territory and the formation of the restructured and integrated National Defence Force. Through a process of *brassage*, the integrated brigades were then placed in a functional military structure as stipulated in Law 04/023. In July 2007 the new Defence Reform Plan was introduced by the minister, outlining a three-phased reform plan with a four-pillar approach: deterrence, production, reconstruction and excellence. However, a new minister was appointed and he devised a new Defence Reform Plan, which retained only the deterrence and excellence pillars of the previous plan. This has yet to be passed by parliament. Lack of clear political direction and agreed programmes and objectives are impeding SSR efforts in the DRC.¹⁵³

The DRC's legal and institutional framework was extensively modified by the ratification of the Rome Statute of the International Criminal Court in March 2002 and the enactment of the military justice code and the military criminal code in November 2002. These legal instruments made it possible to prosecute members of the armed forces and of armed factions for serious crimes committed during armed conflicts.¹⁵⁴ The new constitution stipulated that the decisions of the military courts were subject to review by civilian courts, and placed military judges under the supervision of the judicial services commission. Military penal code covers crimes committed by members of the security forces. The crimes of torture, genocide and forced disappearance are not considered service-related under any circumstances.¹⁵⁵

An AfriMap discussion paper however notes that 'military justice is also rendered ineffective by a legislative framework that is totally anachronistic and contrary to constitutional and international standards on the right to a fair trial'. The military command exercises undue influence over proceedings and there is political interference. In addition, the 'military courts have extended their jurisdictions to encompass civilians, a practice that is contrary both to the constitution and to the African and international standards applicable in the DRC'. This has meant that only a few crimes, and mostly by lower-ranking officials, have led to convictions.¹⁵⁶

The penal code appears to be comprehensive, eliminating official immunity for the perpetrators of genocide, war crimes and crimes against humanity and rejects the possibility of amnesty or pardon for these crimes. It also brings the war crime of recruiting or conscripting child soldiers into line with international law standards by defining child soldiers as those under 18 years. It, however, retains the death penalty for these crimes.¹⁵⁷

DEFENCE

From the inception of the Congo Free State in 1885, Congolese security forces have been instruments of oppression on which successive political regimes have relied to perpetuate their domination over and exploitation of the Congolese people. In the colonial period the military, known as the *Force publique*, was instrumental in Belgium's strategy to assert its often-brutal domination over the vast Central African territory.

After independence, President Mobutu established the *Forces armées zaïroises* (FAZ). According to Library of Congress Country Studies, in 1993 FAZ had 25 000 ground forces, consisting of one infantry division (with three infantry brigades); one airborne brigade (with three parachute battalions and one support battalion); one special force (commando/counterinsurgency) brigade; the Special Presidential Division; one independent armoured brigade; and two independent infantry brigades (each with three infantry battalions, one support battalion). Approximately half of the force was deployed in the Shaba Region.¹⁵⁸ From its inception, however, the army was short of a skilled officer corps and of logistics, and consequently the army consisted of largely untrained ill-equipped soldiers. The lack of professionalism and often lack of salary produced a predatory army, known for its human rights abuses.

In 2002, participants to the Congolese political dialogue in Pretoria called for the formation of a professional, disciplined and republican security force. The constitution of the DRC stipulates that the mission of the military is to defend the integrity of the territory and its borders. In times of peace, the military contributes to economic, social and cultural development, as well as to the protection of people and their goods.¹⁵⁹

In 2003, the transitional government embarked on the creation of a new military called the *Forces armées de la République démocratique du Congo* (FARDC), which brought together combatants of the rebel groups, militias and the former government military through a process of DDR.

The National Commission for Demobilisation and Reinsertion (CONADER) was established to carry out the DDR process in which 180 000 ex-combatants were to be demobilised by December 2006.

The new army, according to the 2005 reform plan, was to consist of eighteen integrated brigades obtained through the *brassage* process, a rapid reaction

force of two to three brigades and, by 2010, there was to be a main defence force of three divisions.

By the eve of the 2006 elections, only 15 integrated brigades had been formed. By July 2008, only 102 000 ex-combatants had been demobilised, through the *Programme national de désarmement, démobilisation et réinsertion* (PNDDR), 2 600 of whom were women.

The *brassage* process appears to have been flawed: it had a poor selection process; no vetting mechanism was applied to prevent human rights abusers from being incorporated into the integrated brigades; soldiers received only 45 days of basic training, much of which focused on peacekeeping operations rather than warfare techniques. In addition, soldiers remained poorly equipped and lived in deplorable conditions.

The situation in the east, in which a hasty *mixage*¹⁶⁰ process was agreed upon to incorporate 6 000 CNDP rebels and local militias into FARDC in early 2009, exacerbated the longstanding issues of payment, discipline, cohesion and performance in the Congolese military.

The Defence Plan, unveiled in 2008, has three phases:

- *Phase 1* (2009–2011) envisages control of the military situation, preparation and implementation for the replacement of MONUC forces, transformation of territorial units to bring them closer to universal standards, and training and rejuvenation of the personnel
- *Phase 2* (2012–2016) envisages empowerment of the military through the implementation of rapid reaction units and main defence units. In addition, it plans to consolidate the territorial defence organisation
- *Phase 3* (2017–2018) envisages optimisation of the existent defence system, territorial units, rapid reaction units and main reaction units. Moreover, it envisages participation of the FARDC in peacekeeping operations

The plan foresees a total of 145 000 troops, and aims to increase the salary of soldiers to US\$65 a month (previously at US\$25).

Besides the army, the DRC has the *Garde républicaine* (Republican Guard), national service, an air force and a navy. The Republican Guard is a presidential force of between 10 000 and 15 000. Members of this force tend to have better working conditions. Not much is known about national service (paramilitary) except that it is geared to training the youth and is tasked with providing the

army with food. The air force is organised into two air groups with a strength of about 1 800 personnel.¹⁶¹ Navy personnel are estimated at around 1 000, with only one operational patrol craft. Like the army, the air force and the navy remain in disarray.

Though SSR is seen as a key priority area, progress appears slow, due largely to a seeming lack of political will. Boshoff notes that ‘attempts to create a National Republican Army with clear lines of command and control, as well as democratic oversight, will challenge the power bases and income-generating sources of influential people.’¹⁶²

Towards the end of 2009, the government completed the Draft White Paper on Defence, which was submitted to parliament. This White Paper calls for integration of the Presidential Guard into the FARDC, separation of the payment chain from the command chain, and independence of the military justice from military structures.

The DRC’s Defence Force needs professionalisation and, given its history, strong oversight mechanisms. While FARDC has an official chain of command, it is often meaningless, since some junior officers receive orders directly from senior politicians or from former rebel leaders, therefore bypassing their immediate commanders. Troops, too, remain divided along ethnic lines and it is not uncommon to witness clashes between different units of the Congolese military.¹⁶³ Congolese soldiers continue to be involved in human rights violations, especially in the east of the country.

POLICING

Policing in DRC has been incoherent. Those who performed police functions came from a variety of colonial and postcolonial structures that were constantly reorganised, renamed, absorbed by other services, or disbanded altogether. Police duties were assigned both to military and to civilian security organisations, often simultaneously. The police underwent alternating periods of centralisation, decentralisation, and transfer of authority. The performance of the police always remained mediocre at best and, at worst, completely dysfunctional and occasionally criminal.¹⁶⁴

Founded in 1888, the colonial *Force publique* fulfilled the basic functions of a police force and an army. This dual role caused tension in the organisation and was a major factor in its poor discipline and lack of effectiveness. The

requirement to act as a police force caused members of the colonial army to be dispersed throughout the country. There they normally came under the control of local civilian administrators.¹⁶⁵

After World War I, military and policing functions were divided into Garrison Troops (military) and Territorial Service Troops (police). In 1959, the Territorial Service Troops were reconstituted into the *Gendarmerie nationale*.¹⁶⁶ The Garrison Troops were intended to serve as a military force oriented against an external threat. The Territorial Service Troops had the mandate of a gendarmerie or police force. Garrison Troops also gradually came under the control of the civilian administration and acted like a police force. In 1959 the Territorial Service Troops (between 6 000 and 9 000) were re-designated gendarmes, although their duties and responsibilities remained essentially unchanged. In addition, there was the Chief's Police, a rural force based in the local territories, but not allowed to carry weapons. At independence, this force totalled about 10 000 personnel.¹⁶⁷

At independence, the *Gendarmerie* was integrated into the military *Armée nationale congolaise* (ANC).¹⁶⁸ Most of the gendarmes were thus incorporated into the national police, totalling 6 000 of a 25 000-member force. The remaining gendarmerie constituted a small, mostly rural police force.

In 1961, all police functions were merged into a centralised policing unit in the Ministry of the Interior, the *Police nationale*. The chaos of the immediate post-independence period, along with the departure of the experienced Belgian officer corps, resulted in the disintegration of the *Gendarmerie*.

When Mobutu came to power, he removed the police from provincial control and standardised police organisation and equipment. Control became centralised under the Ministry of Interior (changed to the Ministry of Interior and Security in 1993). The 1966 law establishing the National Police gave it responsibility for regular police functions in both urban and rural areas.¹⁶⁹

With an authorised strength of 25 000, the new police force absorbed many personnel from the overgrown provincial forces. Politically unreliable or undesirable elements were largely culled. The reorganisation was effective in reducing local paramilitary threats to the regime's authority. It did not significantly improve the performance of basic police functions. Additionally, the deployment of the National Police was limited, for the most part, to urban centres. Responsibility for internal security and public order in the rural areas remained mainly with the existing *Gendarmerie* of the ANC.¹⁷⁰

At local level, a large number of unarmed, untrained, and locally recruited Zairians still performed basic police tasks in support of local authorities. Their numbers were estimated at nearly 30 000 in 1993. Some local areas had almost no police presence as a result of lack of funding to pay them. Even if the police were present, their local activities typically were not coordinated with the national police elements. They probably were neither capable of nor motivated to support national or regional security objectives.¹⁷¹

On 1 August 1972, President Mobutu dissolved the *Police nationale* and merged it into a single force with the largely rural gendarmerie, creating the *Gendarmerie nationale*. This significantly increased the size of the national police force and made it an institutionally and hierarchically equivalent to the Zaire Armed Forces (FAZ). The political authority of the National Gendarmerie was transferred from the Ministry of Interior to the Ministry of Defence (changed to the Ministry of Defence and Veterans' Affairs in 1993) entrenching presidential control of the police. The inspector-general reported directly to the president.¹⁷²

Another police organisation, the Civil Guard, was set up in 1984. This was used to intimidate and repress political opponents. In 1985, Mobutu re-arranged the police organisations once again, creating the *Police nationale congolaise* (PNC), by amalgamating the *Force publique*, *Gendarmerie*, *Police urbaine*, and *Garde civile*.¹⁷³ Its estimated strength at that time was 100 000–140 000 members.

The other important police organisation is the *Police au parquet* (judicial police), which is accountable to the justice system. They are the equivalent of detectives in an anglophone system.

In comparison with the army, the structure and future composition of the law enforcement sector was largely neglected by negotiators at Sun City. The only provision relating to the police in the Global and All Inclusive Accord (Pretoria Agreement) stated that 'an integrated police force shall be responsible for the security of the Government and population'.

The creation of the PNC in 1985 brought together a mixture of former *Force publique*, civil guard, urban police and gendarmerie. The transitional agreement reached in 2002 then saw combatants from each of the former belligerent groups being added, including quotas for senior-ranking officers for each group, regardless of the individual's training or experience. The result was a police service that comprised trained and untrained police officers, ex-militia and ex-

servicemen, and widows and orphans of former agents.¹⁷⁴ Although new integrated police leaders were quickly appointed and housed with MONUC, lack of equipment, logistics, training and personnel records posed major obstacles.

The reform and restructuring of the PNC forms an integral part of SSR efforts in the DRC, being a priority for the transitional government. Memorandum II on the Army and the Security Forces, signed on 29 June 2003 by the signatories to the Global and All Inclusive Agreement, provides for two policing units responsible for security during the transition period. The first is the Close Protection Corps, responsible for the security of political leaders. The second unit refers to an integrated police unit (IPU), responsible for the general security environment.¹⁷⁵

The agreement made the police responsible for securing the transitional elections, instead of the army. The army was to be confined to barracks during the elections, to prevent former warring groups from disrupting the election process. This created unprecedented focus and pressure on the *Police nationale congolaise*, which had previously always been subordinate to the army.

In mid June 2004, the DRC's transitional government appointed a new police high command in Kinshasa, followed by the appointment of provincial police chiefs.¹⁷⁶ Owing to political changes, as well as occasional purges of the police force, there is a high rotation rate of the high command.

Since 2006, the DRC police have undergone large-scale transformation. The pre-2006 structure of the police was characterised by human rights abuses, brutal force, arbitrariness and regime policing.¹⁷⁷ For security, citizens tend to rely on private companies or traditional structures.

According to the International Crisis Group the various police organs are 'primarily predatory ... used by politicians and officers to pursue individual political aims and economic goals while perpetrating massive human rights abuses ... The Congo police have never been able to provide basic law and order and have themselves ranked among the top abusers of citizens' basic human rights.'¹⁷⁸

Accusations of unlawful killing, arbitrary arrest and detention, torture, repression of political opposition and impunity abound. Corruption across all levels of government and all government agencies remains rampant. The introduction of formal salaries, which often remain unpaid, if paid at all, has done little to reduce corruption, and men in uniform still demand money from citizens as their way of generating an income.

Capacity and oversight are lacking in the police and justice system.¹⁷⁹ The police force has no formal budget or even a clear idea of its workforce. Instead of an operating budget, it relies on ‘envelopes’ of operational funds. Estimates of the police labour force between 2003 and 2006 fluctuated between 80 000 and 114 000. A personnel audit in 2006 counted 99 000.¹⁸⁰

The army is still deployed to deal with major outbreaks of public disorder, as a way of bypassing the structural weakness of the police.¹⁸¹

In November 2005, the government established the *Groupe Mixte de Réflexion sur la Réforme et la Réorganisation de la Police Nationale Congolaise* (GMRRR, Mixed Reflection Group on the Reform and Reorganisation of the PNC). It began its deliberations in 2006.¹⁸²

Its 23 members consisted of Congolese and foreign police officers, as well as representatives of institutions (UN and EC) and countries (Angola, France, South Africa and the UK). Only six were Congolese and all six were police officials. No participation was provided for Congolese civil society, elected representatives, justice personnel, traditional authorities or officials from other national government departments.¹⁸³

An internal DFID document, produced in 2006, claimed that,

during the most recent conflicts the PNC has become dis-integrated. The PNC mandate extends to not more than forty per cent of the national territory and many of its members have either joined composant groups, have fled into exile, drifted away or regrouped in the capital city of Kinshasa.¹⁸⁴

The GMRRR submitted reform proposals to the PNC in May 2006. Feedback was given to it in early 2007. A three-day seminar was then held in Kinshasa on police reform in April 2007. For the first time, civil society, a variety of state departments, elected members of parliament and members of the judiciary participated. The final proposal included the ‘principle of unity’ of the police. This would result in the integration of the Immigration and Judicial police into the PNC. It also expressed the achievement of a republican, civil and apolitical police organisation.¹⁸⁵

The GMRRR was then tasked with preparing the *Comité de Suivi de la Réforme de la Police* (CSRP), a mixed committee to monitor the police reform process and the basis for most future donor engagement, which was created and began meeting in 2008.

The CSRP continues to search for a definition of its role to realise the police reforms that were conceptualized initially. This CSRP-focused police reform process was not taken seriously by PNC officers or senior government. The relationship between the CSRP and PNC leadership was not well conceived. No thought was given to procedures for mandating and report-back to police command structures. Reform planning is not even communicated to police officials across the country, many of them completely uninformed about proposed reforms.¹⁸⁶

The European Commission and DFID continue to be central and dominant players in this process. However, there appears to be complete lack of interest in police reform by the government or parliament. President Kabila openly acknowledges that the security sector is weak and abusive, yet the Congolese government has actively resisted or obstructed international efforts to target this institutional dysfunction.

The CSRP is nearing the end of its planning phase, but the Draft Police Law prepared in 2006 has yet to be debated in parliament and the 'Action Plan for Police Reform' is still awaiting ministerial and cabinet approval.

In this political environment, in early 2008 DFID's parliamentary under-secretary of state launched a 5-year £60-million Security Sector Accountability and Police Reform Programme (SSAPRP)¹⁸⁷ in the DRC. If this DFID plan takes off as hoped, the focus of reform will shift to police headquarters. The CSRP will assume the role of monitoring the implementation of planned reforms, impact evaluation and coordinating donor action.

JUSTICE AND PENAL SECTORS

Justice

In any country, the judiciary plays a crucial role not only in ensuring that the fundamental rights of all individuals are guaranteed, but in building a foundation of trust within the society, which allows individuals to cooperate with one another in order to increase their welfare and that of the society. On top of that, the judiciary contributes to maintaining security in society, since there is often a close relationship between institutional failure in the justice and security sectors and the amount of organised crime activity in society.¹⁸⁸

However, in the DRC the judiciary is faced with numerous challenges such as corruption, limited access to justice and the dependency of the judiciary on the executive. Since the 2006 elections, several initiatives have been taken by the elected government of the DRC and its foreign partners to reform the judiciary.

By mid 2007, the elected government of the DRC had elaborated an action plan on the reform of the judiciary, with the support of Great Britain, France, the European Commission and the United Nations Development Program (UNDP). This action plan included ten programmes that sought to resolve structural issues around the management of the judiciary (finances, human resources and training, equipments) and judicial policy, and to address lack of knowledge of the judicial system. At about the same time, the Congolese government initiated the elaboration of several draft papers aimed at restructuring the judicial system through the establishment of new jurisdictions (that is State Council, Constitutional Court, Supreme Court, High Council of Judges) that will ensure the independence of the judiciary.¹⁸⁹ However, by the end of 2009 parliament has voted into law only the draft bill on the High Council of Judges, while the draft bills on the State Council and the Supreme Court are still under examination.¹⁹⁰ The High Council of Judges has been operational since 2009. It is made up solely of judges, including (surprisingly) military judges.

In addition, there have been concrete actions on the ground aimed at improving the provision of justice in the DRC. For instance, the EU has provided technical and financial support to the *Restauration de la justice au Congo* (REJUSCO), an NGO involved in justice rehabilitation projects in Eastern Congo. The EU's support is aimed at rehabilitating infrastructure (courts, vehicles), training judicial officials, facilitating the access of women to justice and raising awareness of the 2006 law on sexual violence.

Despite the reform initiatives initiated in the field of justice since 2006, the state of the judiciary in the DRC is still a matter of concern. It remains plagued with problems such as poor working conditions, low salaries for judges, and intrusion of politicians into judicial processes and matters.¹⁹¹

Some decisions by President Kabila have impacted negatively on the independence of the judiciary. For instance, in February 2008, Kabila fired 92 judges and appointed 26 high court judges, including a chief prosecutor. This happened when the draft bill on the organisation and functioning of the High Council of Judges was still under examination in parliament. In July 2009, President Kabila

again retrenched more than 200 judges on the proposition of the High Council of Judges. President Kabila claimed that his decision was motivated by the need to clear the judiciary system of corruption and other plagues. Still, the procedure followed by the president was seen as unconstitutional since the removed judges were denied the right to defend their cases before the High Council of Judges. In the light of these actions by President Kabila the independence of the High Council of Judges is put into question.

The government of the DRC then initiated the selection process for new judges, as part of its plan to reform the judiciary. At the end of the process, the government plans to hire 500 new judges in 2010 and a further 1 000 judges in 2011. The appointment of new better-educated judges is positive, but such a development can yield sustainable positive results only if the overall judiciary is reformed, that is, the working and living conditions of judges have to be improved and political intrusion in judicial processes must be stopped.¹⁹²

The reform of military justice is also an important issue in the DRC, given the acts of sexual violence and other crimes committed by soldiers of the FARDC, particularly in the east of the country.

Since 2003, efforts have been undertaken to consolidate Congolese military justice. Military prosecutors, judges and judicial staff have received training from MONUC and other foreign NGOs. In addition, the EU has funded the rehabilitation of courts and prisons through REJUSCO programmes. As a result of these initiatives, in 2008 a total of 88 cases of sexual violence were registered in military courts in South Kivu province, compared with only one in 2003.¹⁹³

Despite progress, the Congolese military justice system remains weak: it has limited financial resources; there is a shortage of judges; and the intrusion of military commanders into judicial processes persists. An added problem is that Congolese law mandates that a judge in a military court must have a rank that is similar to or higher than that of the defendant. However, because there is a shortage of higher-ranking judges in the military justice system, it is difficult to prosecute senior officers suspected of being involved in crimes. Congolese military justice is not insulated from other military structures either.

Military commanders in the DRC continue to be powerful figures that are treated as untouchable. No senior military commander has been prosecuted, although some are known to have been personally involved in acts of sexual violence. Military commanders usually interfere in judicial processes, pressuring prosecutors to drop charges against their soldiers.¹⁹⁴

Penal sector

The Congolese penal system is faced with problems such as overcrowding, poor sanitation, rape of minors, inadequate security, corruption and prolonged detentions. The government, with the backing of foreign partners, initiated the development of three regulatory codes: correctional code; code on judicial organisation and competence of the judiciary; and penal code. Since then, the elaboration of the correctional code and the code on judicial organisation and competence of the judiciary has been completed, while the penal code is still under examination in parliament. In addition to these initiatives, MONUC and the EU have funded the rehabilitation of prisons, especially in the east of the country, through REJUSCO projects.

However, the reform of the penal system in the DRC remains unsatisfactory. Corroborating this view, participants at the workshop on penal reform in June 2009 in Kinshasa acknowledged the devastating state of the Congolese penal sector and pledged to provide the minister of justice with practical measures and strategies aimed at launching effective reform of the penal system.¹⁹⁵ Meaningful reform of the Congolese penal sector, however, will take place only when the overall justice system has been transformed.

PRIVATE SECURITY

The private security industry began to emerge in the DRC in the 1980s. It grew from a few companies to between 35 and 45 registered companies in 2007, employing about 25 000 personnel – compared with 70 000 in the police.¹⁹⁶ The growth of this industry is attributed largely to a perceived lack of security provision by the state and by the growth in the number of international companies and expatriates in the country. Ownership of private security companies is dominated by internationals, but the employees are local.

Private security companies (PSCs) provide services as diverse as guarding, access control, alarm and response, cash in transit, general packet radio service (GPRS) tracking, VIP escort and transport of mining assets, risk analysis, assistance after traffic accidents and with car breakdowns.¹⁹⁷

MONUC is one of the biggest clients of these security companies.

PSCs fall under the responsibility of the Department for Civil Protection of the Ministry of Interior. The industry, however, is largely unregulated. There

is a law that prohibits active or former public security employees from being recruited by the PSCs.

Without this restriction, public security employees could massively seek employment in the private sector where salaries are four to seven times higher (\$20–\$40 compared with \$90–\$150). Preventing the recruitment of former or active public security employees is the most important issue in the vetting and screening process.¹⁹⁸

The potential for commercialisation of the PNC is worrisome. In 2001, the PNC formed the *Brigade de Garde*, which was originally designed for special situations, VIPs and government officials, but is now available to everybody who is willing to pay. Its size in Kinshasa is about 6 000, and in other provincial capitals about 1 000.¹⁹⁹ This has become a source of extra income for police and thus creates income disparities within the police force. It also has the potential to create a conflict of interest and to generate disloyalty.

INDEPENDENT OVERSIGHT AND ACCOUNTABILITY

The long-term security of any country can be assured only when security services are professional and operate under a democratic framework that ensures that they are held accountable by civilian authorities.

Parliament and civil society are crucial oversight mechanisms for the security sector. Since its installation, after the 2006 elections, the Congolese parliament has struggled to hold this sector to account. After the successive military defeats against CNDP rebels in 2007 and 2008, parliament became eager to oversee the management of funds allocated to the military and to push for quick reforms of the FARDC. The Lower House, under the leadership of Vital Kamerhe, decided to establish special commissions to investigate the management of funds by the military, Central Bank, and other government agencies. However, the initiatives taken by Kamerhe angered the Kinshasa government.

Tensions reached their height when Kamerhe denounced the decision by President Kabila in early 2009 to allow Rwandan troops to enter eastern Congo without informing parliament. Kamerhe was forced to resign and was replaced by one of Kabila's loyalists, Evarist Boshab. There is thus a need to strengthen the ability of parliament to effect sufficient oversight.

The police in the DRC have never operated within a democratic environment. Senior police officers still understand their mission as protecting the state from internal or external enemies.

In an incident in Bas Congo, the capital of Province Orientale, at the beginning of 2008, Human Rights Watch observed many instances when soldiers and police officers fired indiscriminately at demonstrators.²⁰⁰ Reprisal killings continued for days and months afterwards as soldiers and police officers allegedly summarily executed injured persons and others suspected of being opposition supporters.

Over the last few years a number of high-profile assassinations have generally been ascribed to members of the security services, mostly the military, but also the police. These include Daniel Boteti, a vice-president of the capital's provincial assembly, at the beginning of July 2008, for which two members of the republican guard were arrested. The murders of journalists Franck Ngyke Kangundu in June 2006 and Bapuwa Mwamba in July 2006 remain largely unresolved, but suspicions abound of police or army complicity. The most recent case is that of Floribert Chebye, the head of *Voix des Sans-Voix* (Voice of the Voiceless, VSV) found strangled on 2 June 2010. He had been called to a meeting with the inspector-general of police, General John Numbi, the previous evening. The inspector-general was suspended soon after this incident.

On 4 June 2010 the US State Department issued a release that accurately sums up the general state of affairs:

We are concerned about the killings of other human rights defenders in the DRC in recent years, and note that Congolese human rights groups remain particularly vulnerable to harassment, arbitrary arrest and detention, and other abuses by security forces.²⁰¹

Issues of major concern in the DRC are the prevalence of popular justice; killings in Province Orientale and North and South Kivu; political killings in Bas Congo and Kinshasa; deaths in prisons; sexual violence and extrajudicial executions; impunity; and the weakness or absence of the criminal and military justice systems.

The police have not yet been fully demilitarised, and in addition have absorbed a large number of ex-rebels and demobilised soldiers, few of them whom have received police training. Oversight mechanisms meet resistance

from the police hierarchies, which operate within a managerial culture where questioning authority is neither encouraged nor tolerated. This has been heavily criticised by Congolese civil society. The DRC government's general disregard for oversight and accountability mechanisms results in democratic oversight remaining a serious challenge.

External oversight of the PNC is exercised through the Ministry of Interior and Security. Internally the PNC has established a division for internal monitoring – the *Inspection-Générale d'Audit*. However, the internal accountability system for the PNC is delegated by the constitution to the armed forces of the DRC. Thus, incidents of indiscipline by police officials are dealt with by the military justice system.

A number of government agencies have potential police oversight functions. These include the National Electoral Commission (only during election times), the High Authority of the Media and Communication (also largely during elections) and the offices of the public prosecutors. Congolese and international NGOs and research groups (such as Global Rights, Human Rights Watch) play a role in providing independent, civil society scrutiny over the behaviour of the police.²⁰²

The judiciary's role as an overseer may be limited. The constitution includes a provision that judicial decisions are enforced in the name of the president, which may result in illegitimate political interference in court decisions. The president has the authority to appoint and dismiss a judge without any restriction.

The Assembly and Senate Committees on Defence and Security also have oversight powers. These were exercised early in 2008. The inspector-general of the PNC was called to appear before parliament after police shootings in Bas-Congo. The inquiry was broadcast on television.

The development of civil oversight institutions in the DRC has been led almost exclusively by external partners working at national and local level to reform governance. However, even here 'international partners have paid little attention to the role of parliament in terms of budget-approval and oversight, as well as passing legislation essential for police reform'.²⁰³

A number of international organisations (such as Global Rights, Human Rights Watch) non-governmental organisations and research groups play a role in providing independent, civil society scrutiny of the behaviour of the police.²⁰⁴

Again a large number of institutions and organisations are involved, some of whom may have an oversight component as part of a larger programme. The major players in civil oversight reform are the same players that are currently

engaged in police and justice sector reform. There are significant overlaps with these more highly funded programmes, which are complementary to oversight and judicial reform efforts.

The United Nations Development Program (UNDP) started a US\$390 million governance programme in 2008 that will run through to 2012. The political governance branch of the programme seeks to provide support for institutions such as the parliament and provincial assemblies, as well as political parties, the media, and civil society organisations. The legal and security governance component will work towards judicial reform, capacity building in the security forces, efforts to combat corruption in public administration, and action to strengthen internal and external audit institutions.²⁰⁵

UNDP claims that the programme priorities were determined through a broad-based consultation and dialogue with the DRC government, parliament, civil society organisations and international financial and technical stakeholders, but it is likely to be sensitive.

The Carter Centre has worked in the DRC to help strengthen democracy since observing the country's 2006 elections through a series of initiatives to strengthen the justice sector, including the judiciary, police force, and various government ministries dealing with human rights protection.

Since 2007, the Carter Centre has trained more than 200 Congolese police officers²⁰⁶ and judges in human rights policy and practice; established and trained a network of Congolese NGO partners in human rights; and trained women and men as paralegal consultants in the prevention and redress of gender-based violence.

The Centre offers training in both human rights legal frameworks as well as professional skills needed for the daily application of human rights standards, including the investigation and prosecution of crimes of sexual and gender-based violence, the rights of minors, and the right to due process for all detainees.²⁰⁷

DFID contracted the Institute for Democracy in Africa (Idasa) to assist in the GMRRR process. Working with the South African Police Service (SAPS), it facilitated and hosted a series of conferences to discuss reform. Up to the end of 2009 it managed projects to ensure that civil society and citizens are informed of the issues surrounding reform of the police force, in addition to providing an

enabling environment in which these groups can contribute to the process.²⁰⁸ The programme supported the creation of a national civil society network on SSR, which has over 100 members; and nodes in every province.

The International Centre for Transitional Justice (ICTJ) has a Swedish-funded programme in the Congo, which includes a focus on accountability for human rights abuses as well as a focus on SSR. It has:

organised several training programs in 2009 of leading civil society actors to raise awareness of the links between transitional justice and security system reform (SSR), particularly police reform. ICTJ is engaged in ongoing advocacy on army and police reform, seeking to infuse a justice-sensitive approach to SSR by advocating for the identification and removal of past human rights abusers from the army, police and other security forces and create ongoing accountability mechanisms in these sectors.²⁰⁹

ROLE OF CIVIL SOCIETY

Since the beginning of the civil war in 1996, civil society has been involved in initiatives that sought to bring about peace. Civil society delegates participated in the Pretoria political dialogue of 2002, which paved the way for political transition. During the transition period, civil society leaders occupied significant positions in transitional institutions, such as the head of the Independent Electorate Commission. Since 2006 they have also been involved in SSR processes, though these have been limited to police reform.

Civil society delegates and experts were instrumental in helping the government elaborate a national doctrine for the Congolese police. In addition they sensitised members of the Defence and Security Committee of parliament to the need to pass laws that are attuned to good governance of security forces. Since late 2009, civil society organisations have dispatched a team to parliament to provide expertise and guidance to parliamentarians who are examining the draft papers on the reform of the police and the military.

Civil society, however, still faces opposition from the government, which does not always appreciate its contribution in security-related issues. Moreover, security forces systematically target journalists and leaders of civil society who openly challenge the government regarding issues of human rights abuses, SSR, corruption and democracy.²¹⁰ Civil society itself needs to be better schooled in

the structures and functioning of the security apparatus so that it can play a more meaningful oversight role.

KEY CHALLENGES AND RECOMMENDATIONS

Since 2003 the DRC has undergone a number of reforms aimed at reconstructing its political and security environment after a long civil war. Post conflict reconstruction is being conducted in an environment of continued instability in the east, tension between political parties and with severe resource constraints. It is therefore not surprising that there are question marks about the existence of sufficient political will for the far-reaching transformation of the security sector in the DRC. Security sector reform appears to have been conducted in fits and starts and has therefore largely been incoherent. There is no overarching SSR/governance programme guiding the reforms in all the different security institutions. The Police law prepared in 2006 has yet to be passed, the defence reform plan is still in flux and draft bills on the State council and High Council of Judges are still under examination. All the security institutions and the judiciary are plagued by poor working conditions, lack of resources and intrusion by politicians. The independence of oversight institutions is questionable and their capacity for oversight is limited. We therefore recommend the following:

- The DRC should consider developing a national integrated security strategy
- All institutions in the security sector need serious attention in terms of professionalisation, depoliticisation, and capacity building
- The independence of the justice sector, including military judges, must be safeguarded
- Regulation of private security must be addressed
- Develop a comprehensive SSR/SSG programme that incorporates Intelligence
- Strengthen oversight mechanisms, especially parliamentary committees of individual security institutions and the committee on public accounts
- Civil society must be included in SSR processes and capacitated to play a meaningful role
- Attention must be paid to prisons, especially in relation to outdated laws and regulations, and shortcomings in infrastructure
- Sexual violence by civilians and the armed forces is a matter of grave concern and effective measures to combat it have to be put in place

5 Lesotho

POLITICAL OVERVIEW

Lesotho gained independence from Britain in October 1966. A coup by the Royal Lesotho Defence Force in 1986 led to General Lekhanya becoming head of state until 1993. Democracy was restored in the 1993 election after the victory by the Basotho Congress Party (BCP). The BCP split in 1997 and many members of parliament followed the prime minister to the Lesotho Congress for Democracy (LCD), which came to power. An army mutiny in 1998 was quelled by intervention from SADC forces. An interim political authority was established and facilitated new elections in 2002. In April 2009 an assassination attempt on the prime minister failed.²¹¹

For more than 30 years of its four decades of independence, Lesotho has been characterised by internal political instability, weak democratic institutions and practices and partisan security institutions. Lesotho presents an interesting case study for investigation of the interface between governance and security and justice institutions, because it is the only country in the Southern African region that has experienced extreme forms of governance – from military rule to constitutional democracy.²¹²

Although experiencing high levels of poverty, high HIV/Aids prevalence and unemployment, Lesotho enjoys a modicum of political stability. However, the attempted assassination of Prime Minister Pakalitha Mosisili²¹³ in 2009, in what was perceived to be an attempted coup, demonstrates the fragility of politics. Despite this incident, Lesotho has remained politically stable with security institutions and the judiciary performing their tasks, albeit with a number of challenges.

According to the UN, institutions that comply with the principles of good governance are ‘participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law’.²¹⁴ Even more importantly, good governance ‘assures that corruption is minimised, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making’.²¹⁵ This concept ensures that institutions are responsive to the present and future needs of society. The sections that follow discuss the constitutional and legal environment, and the main security institutions with a view to exploring the extent to which they follow good governance principles.

CONSTITUTIONAL, POLICY AND LEGAL FRAMEWORKS

Lesotho is a parliamentary constitutional monarchy, with King Letsie III as head of state. Executive power resides with the prime minister.

The constitutional, policy and legal frameworks of Lesotho establishes four primary state institutions responsible for security: Lesotho Defence Force (LDF); National Security Services (NSS); Lesotho Mounted Police Services (LMPS); and Lesotho Correctional Services (LCS). The LDF is ‘established by Article 146 of the 1993 constitution, which states that ‘there shall be a Defence Force for the maintenance of internal security and the defence of Lesotho’.²¹⁶ The prime minister is commander-in-chief and determines the operational use of the LDF. But the appointment of the commander of the LDF rests with the king.

The Ministry of Defence developed a defence policy in 1995. This policy notes that the LDF should be apolitical, accountable, capable and affordable, thus speaking to the security reform measures deemed necessary after the coup. The Defence Force Act was passed in 1996, ‘aimed at providing the structure, organisation and administration, as well as discipline for the forces’.²¹⁷

Since 1993 three major initiatives to reform the Lesotho Mounted Police Services (LMPS) have been introduced, namely the 1997 White Paper on Police Reform, the 1998 Police Service Act, and the five-year Development Plan for the LMPS (1998–2003). The White Paper provided the vision, which was ‘to build a professional police service able to discharge its law and order functions without political bias and in partnership with communities’.²¹⁸ The LMPS was envisaged to provide:

a high quality Police Service in Lesotho and in conjunction and consultation with the community, other organisations and agencies seek to promote the safety and security of the individual, reduce crime, disorder and fear and enhance confidence in the rule of law.²¹⁹

At the heart of the White Paper was the commitment to maintain an effective, efficient, and accountable police service, as well as to enhance internal discipline, and build confidence and trust between the police and the public. It emphasised democratic partnership between the police and the public in order to achieve three basic strategic goals: reduction of crime, improvement of service to the public, and efficient management of police resources.²²⁰ These were important shifts that provided a framework for democratising the LMPS.

The Lesotho Mounted Police Service Act of 1988 outlines the duties of police officers: to preserve peace and maintain law and order; to prevent all offences against persons or property; and to detect offences, apprehend offenders and bring them to justice. Many of the reforms promulgated in the 1998 Act were not implemented. A reform committee was established in 2004 to fast-track reform, and this saw movement in a number of areas, including the establishment of the Police Complaints Authority.²²¹

The constitution of Lesotho requires that people in detention should be treated within the human rights framework. It prohibits the use of torture, physical assaults and any inhuman treatment of detainees by security agents. It stipulates that ‘no person shall be subjected to torture or to inhuman or degrading punishment or other treatment’.²²² Lesotho Correctional Services (LCS) recognises the need to treat inmates within the human rights framework as reflected in their policy. The LCS policy on the fundamental human rights of prisoners stipulates explicitly that constitutional rights should apply equally to all prisoners, regardless of their crimes, race or gender. The

legislation for the incarceration of inmates adheres to rules regarding the treatment and separation of children in conflict with the law, and women from men as well as convicted from awaiting-trial prisoners. The law also provides that pre-trial detainees and convicted prisoners should be held in separate prisons. However, reports indicate that pre-trial detainees were held with convicted prisoners, although civilian and military/security prisoners were held in separate facilities.²²³

Private security firms are regulated under the Private Security Officers Act,²²⁴ while the conduct of guards is regulated by the Private Security Guards (Code of Conduct) Legal Notice 91 of 2003 and Private Security Officers Regulations.²²⁵ These regulations provide a code of conduct for all security guards to abide by. However, the challenge is lack of capacity to enforce this regulation.

DEFENCE

The army evolved as a paramilitary police – the police mobile unit – in the 1960s, transformed into a modern army in 1980, and into the Lesotho Defence Force in 1986.²²⁶ The LDF consists of an army and an air wing, with a personnel component of around 2 100 people. The army consists of the defence headquarters; 7 infantry companies; 1 support company; 1 armoured reconnaissance company; 1 artillery battery and 1 logistics support group.²²⁷

The primary role of the LDF is to protect the territorial integrity and sovereignty of Lesotho. Its secondary role includes:

- Assistance in the preservation of life, health and property
- Provision and maintenance of essential services
- Upholding law and order in support of the police as directed by government
- Support to state departments as directed by government
- Compliance with international obligations such as peacekeeping-support operations and regional military cooperation²²⁸

The military in Lesotho have been at the centre of much of the political manoeuvring in the country. The BNP, whose rule was founded on the support of the security services, was dislodged by a military coup. The military then ruled Lesotho from 1986 to 1992. Again, after the democratic election of the BCP, disquiet was noted in the army.

The turbulence, therefore, had less to do with salary demands by the security establishment; it was a veiled political challenge to the new BCP government to safeguard interests and security of forces, which are historically aligned to the BNP.²²⁹

These aspects of the defence force prompted the SSRs that transpired.

The democratisation and civilianisation of the LDF was critical in ensuring that it was subject to civilian authority and accountable for its activities and programmes.²³⁰ One of the important tasks of the democratic government that came into power in 1993 was to create a civilian authority to manage the affairs of the military and ensure that it was accountable to the government – of the people. The Ministry of Defence was established in 1994, albeit against a background of direct military control of civilian life, something that was diametrically opposed to the aim and mandate of the ministry. The immediate task of the ministry was to de-politicise the military and put in place governance structures to reduce political interference on issues such as promotion and even recruitment into the military. Entrenching the principles of good governance was important in addressing the problems of nepotism, corruption and politicisation of recruitment based on political affiliation. It also addressed the low levels of public confidence and impartiality of the military in providing services.

Military recruitment is based on objective criteria of education and fitness and no longer on party affiliation and ethnicity. Recruitment is made from Basotho who meet the basic requirements and fitness levels. This has been important in depoliticising the military and creating a professional army that can serve the interests of the country. Lesotho's constitution advocates for gender equality, but we were unable to determine how many women are part of the LDF.

POLICING

The Basotholand Mounted Police was established in 1872 with 110 men. At independence the police was the main law enforcement agency.²³¹ The LMPS was used as an instrument of coercion by the ruling BNP after independence and through the years of military rule.²³² It now numbers 3 000–4 000 officers.²³³ Of these an estimated 83 per cent are male.²³⁴

According to the Police Strategic Plan (2006–2009), the police planned to reduce incidences of crime by 30 per cent per annum by 2007. The targets were

priority crimes such as stock theft, sexual offences, murder, commercial crimes, robberies and housebreaking.

The Operational Services Department is commanded by the deputy commissioner of police: operational services, whose main responsibility is to oversee to the national planning, development of crime prevention and reduction strategies. He or she is assisted by the assistant commissioner of police: crime; assistant commissioner of police: complaints and discipline and three regional commanders. The Operational Services Department is responsible for:

- Formulating policy recommendation on national operation incidents
- Planning national operation events
- Preventing crime
- Managing and controlling human and material resources²³⁵

The Child and Gender Protection Unit (CGPU) in the police administration was established in 2003. The CGPU, which has branches in all 11 police districts countrywide, deals with crimes against women and children, especially abuse.

JUSTICE

The Lesotho Country Strategy Paper and National Indicative Programme for 2008–2013 developed a project entitled ‘Strengthening the Lesotho Justice Sector’. The project intends to help realise the national vision for the justice sector, adopted in 2004, which aims to:

have a justice sector committed to providing a professional service in safety and security, accessible and efficient delivery of justice, improved rehabilitation of offenders, effective human rights protection system for all and promotion of zero tolerance to corruption.²³⁶

The main obstructions to an effective justice system are slow legislative reforms, lack of material, financial and human resources, inadequate administrative procedures and case management processing systems, non-existence of specialised professional and technical training, restricted access to legal documentation, limited communication on judicial proceedings, and lack of knowledge of existing legal rights. As a result of the ineffective case management system, civil and

criminal cases are adjudicated with disconcerting delays. Statistics compiled by the Directorate of Public Prosecution in August 2007 indicated that a staggering 19 750 criminal cases were pending prosecution in the magistrates' courts and a further 1 507 cases were pending prosecution before the High Court.²³⁷

To address some of these challenges, the judiciary is waiting for the Judicial Administration Bill, which will bestow operational and financial autonomy to the courts and ultimately remove the judiciary from the executive's control. The Ministry of Justice, Ministry of Law, Law Society and Directorate on Corruption and Economic Offences face similar problems of capacity and human resources.

CORRECTIONAL SERVICES

The Lesotho Correctional Services (LCS) is located in the Ministry of Justice, Human Rights and Correctional Services. The ministry provides administrative support for two departments in the criminal justice system: the judiciary and correctional services. The ministry is charged with 'the dispensation and administration of justice, protection and promotion of Human Rights and the rehabilitation of offenders'. Whereas the judiciary is responsible for the administration of justice, the correctional services department is responsible for the rehabilitation of offenders. The LCS is tasked with 'contributing to the maintenance and protection of a society that is just, peaceful and safe'. This it does through:

carrying out the sentences of the courts by detaining all inmates in safe and secure custody whilst retaining their human dignity; promoting self-respect, social responsibility and human development of all inmates; and ensuring reformation, rehabilitation and social reintegration of inmates into society.²³⁸

Despite constitutional provisions protecting rights of imprisoned persons, reports point to a failure by the prison system to entrench them. There are widespread allegations of human rights violations of people in detention by prison officials. According to Lesotho Council of Nongovernmental Organisations (Lecongo), reports by inmates confirm that they were beaten while in police detention and prison.²³⁹ In 2004 the Office of the Ombudsman recommended

disciplinary action against a warden at Mohale's Hoek prison after two prisoners killed themselves following allegations of abuse by the warden. No action was reported to have been taken against the warden. Similar abuses were investigated, but no action taken against the culprits. The allegations of mistreatment of inmates were confirmed by a US State Department report, which concluded that 'the use of force and physical assaults of detainees by the police and prison officials appear to be common in Lesotho'.²⁴⁰

In 2007 the ombudsman's report documented abuse of prisoners at Quthing Correctional Services, which resulted in an inquiry being launched.²⁴¹ The inquiry revealed serious abuse of prisoners and resulted in the commanding officer being transferred to another facility. Unfortunately, there were no reports of action being taken against other prison officials who were implicated in this inquiry.

The lack of adequate basic infrastructure in most prisons in Lesotho contributed to prisoners being denied their basic human rights. The majority of prisons were in a terrible state of disrepair. Reports by the Office of the Ombudsman from 2002 to 2008 criticised the conditions under which prisoners were kept. The 2004 report, which was based on inspection of prisons in Berea, Leribe, Butha Buthe, Mohotlong and Quthing, found that the prison buildings did not meet modern standards.²⁴² These prisons were too small for their population, which 'is never below the building's capacity'.²⁴³ Further, the report found that buildings were not being maintained, some of which looked 'like they were last painted in 1964'.²⁴⁴ In Berea prison, the report found that:

when it rains there is leaking in the old rusting roof. There is no ceiling in the roof. The floor is not tiled and inmates sleep on that bare cracked concrete floor which needs topping because there are no beds or mattresses/ sponges though there are tattered ones in some cells.²⁴⁵

A 2009 report by the Council of NGOs made similar findings, suggesting that few or insignificant changes had been made towards ensuring that inmates lived in habitable conditions in prisons.²⁴⁶ Awaiting-trial prisoners and convicted prisoners lived in appalling conditions. Inmates slept on thin mattresses or on floors in filthy cells. Toilets were kept inside cells where inmates live. This exposed them to unhygienic, unhealthy conditions and diseases. As a result, infectious diseases such as tuberculosis spread easily. This was made worse

because the prison population of inmates was often almost double the capacity and prison cells were overcrowded.²⁴⁷

However, a 2008 report by the Office of the Ombudsman found that changes had been made, especially in addressing the problems of uniforms, bedding, blankets and feeding, but noted serious concerns about the risk of diseases spreading easily because of poor management of people who were sick.²⁴⁸ Most prison institutions kept sick and healthy prisoners together, with the possible consequence of diseases spreading or cross-infection between sick inmates.

A lot of inmates were complaining of diseases which are commonly associated with HIV/Aids, but no investigation had been made into the prevalence of HIV/Aids in our Correctional Institutions. Inmates had little or no information about HIV/Aids. They had no access to condoms and government's policy on the distribution of condoms to inmates was frowned upon by prison authorities for the reason that there was either no policy or that such a policy were not known to them.²⁴⁹

The minister responsible for LCS acknowledged the problems and stated that the findings in those reports were indisputable, particularly as the appalling conditions in the prisons.²⁵⁰ Although implementation had been slow because of budgetary constraints on the part of government, efforts were being made to carry out recommendations by the ombudsman and human rights organisations. There had been considerable improvement in the prison diet, some prison buildings were being renovated, and electrification of some prisons in the rural areas was ongoing.²⁵¹

PRIVATE SECURITY

Private security has expanded in Lesotho since the late 1990s, predominantly owing to insecurity caused by crime and to negative perceptions of the police. Whereas in 1980 there was only one private security company (Security Lesotho), in 2002 there were seven registered security companies and approximately 13 unregistered. Initially, these firms were used only to protect businesses, but a growing number of households are employing the services of private security firms. This increase in firms is believed to be related directly to negative perceptions of crime and of the capacity of public state institutions to

provide public safety. Expansion in the private security market has been aided by a growing mistrust of the national security forces, especially with the police. This mistrust is increased by perceptions of high crime levels, particularly serious and violent crimes.²⁵²

The private security industry is often attractive to skilled army and police personnel. Private security guards are frequently paid much higher salaries than state security personnel. As a result, the LMPS and the LDF, as well as former security personnel, are regularly targeted by the private security industry.

In particular, difficulties in procuring firearms make it attractive to employ retired and former security personnel because of their training contacts. In addition, most have private firearms. Private security companies are permitted to procure firearms, but are required to apply for firearm licences in the same way as civilians, a process that can take more than two years, and presents a significant constraint to arming the industry.²⁵³

Basotho people are relying increasingly on the private security industry for safety and security. In the study, one respondent indicated ‘businesses in Lesotho and middle class people are heavily relying on private security firms to protect their businesses and homes’.²⁵⁴ In fact, the respondents all agreed that the private security industry had to a large degree taken over the responsibility of the state to protect its citizens. There was also a suggestion that public institutions rely heavily on the private security sector to arrest alleged criminals. According to one respondent, himself a former police officer and now a security guard, ‘this over-reliance of the police on the private security to arrest alleged criminals has resulted in the police turning a blind eye on acts of brutality by security guards’.²⁵⁵

INDEPENDENT OVERSIGHT AND ACCOUNTABILITY

The parliament of Lesotho consists of the king, Senate and National Assembly. The general feeling is that owing to the dominance of LCD party from 1998, parliament lacks the capacity to drive the transformation process. The most critical challenge that still confronts the Lesotho government is to reform the way in which parliament monitors and oversees the roles and functions of the security establishment and, indeed, plays a key role in this process of SSR.

The National Assembly is the main legislative body. It enacts laws for the good governance and administration of the country and scrutinises the political

executive on the management and administration of their portfolios. The National Assembly is the lower chamber of the country's bicameral parliament. The key responsibility of parliament includes overseeing state institutions, including the security institutions. On the other hand, parliamentarians are responsible for ensuring a free flow of information, informing citizens and consulting with citizens about legislative proposals and government programmes. However, the role of parliament in overseeing the military is weak because there are no effective parliamentary committees in place to watch over the executive functions.

The Ministry of Defence (MoD) was established in August 1994. This was seen as a political expression of civil control of the military through both the executive and legislative arms of government. The political authority of the LDF is the minister of defence, who is also the prime minister of Lesotho. The minister is accountable to the executive and to parliament for the activities of the LDF.

The overall operation of the MoD is governed by four main principles:

- Separation of military and civilian powers in order to restrain involvement of the army in partisan politics
- Legality of all operations – all operations by the LDF should be conducted within the framework of the law
- Accountability of the LDF to the elected civilian authority through the MoD and Defence Council
- Transparency of the activities and functions of the LDF through the provision of annual reporting to parliament of the activities of the army²⁵⁶

The MoD's mandate is confined strictly to administrative and executive functions, while all operational responsibilities of the armed forces are the domain of the Defence Council. This is an important oversight institution for the defence force. The Defence Council comprises the minister of defence, the principal secretary of defence, the commander of the LDF, a secretary, and two other members (civilian or military) who are appointed by the defence minister. The prime minister, as head of government and of the Ministry of Defence, is the chairperson.²⁵⁷ The prime minister is the most important individual in managing civil-military relations.

The Defence Council plays an important role in strengthening oversight and accountability mechanisms in the military. Its other functions include making

recommendations to cabinet on defence policy, and on conditions of service of soldiers. It also addresses complaints relating to LDF members. With input from the Defence Council, the MoD is expected to develop policies to transform the LDF into an apolitical, accountable, capable, and affordable defence force. That the Defence Council participates and makes recommendations in the policy-making process is itself a milestone in entrenching good governance principles in the military.

The constitution also makes provision for the Defence Commission, which is responsible for the appointment, discipline and removal of members of the Defence Force, members of the Police Force and members of the Prison Service. The commission consists of the prime minister, the commander and deputy commander of the defence force; the commissioner and assistant commissioner of police; and the director and deputy director of the national security service. The Defence Commission decides on the appointment of the commissioner of police, but the commissioner of police is in command of the police service.²⁵⁸

Section 117 of the Constitution of Lesotho, Audit Act of 1973 and Statutory Bodies Act of 1973 establish and set out the mandate of the auditor general. The auditor general and the Public Accounts Committee provide regular oversight of, and reports on, expenditure of the security sector institutions.

The Office of the Ombudsman was established in terms of Section 134 of the 1993 constitution and the 1996 Ombudsman Act. The ombudsman is appointed for a four-year term by the king, acting on the advice of the prime minister. The mandate of the Office of the Ombudsman is to protect citizens against infringement of their rights by public- and private-sector organisations. The office investigates and recommends preventative and remedial actions on complaints related to maladministration, corruption, injustice, human rights, corruption and degradation of the environment. The ombudsman has intervened in many issues, such as requests for the release of unlawfully withheld salaries; reinstatement of employees suspended illegally from their jobs; and compensation for and repair of houses in communities close to large-scale development projects.

The office is not adequately resourced and therefore constrained by shortages of staff, financing and equipment. But to its credit, the office appears to function without undue governmental or political interference.²⁵⁹

The police have been placed under the civilian and political authority of the Ministry of Home Affairs. To guard against political interference in the police,

a directorate was created in the ministry to provide administrative support and to make certain that the police carried out the reforms proposed in the 1997 White Paper on Police Reform. This directorate is an important oversight structure which monitors police performance and deals with grievances of police personnel. Importantly, the head of the directorate, the principal secretary, is a civilian.

To avoid political intrusion in the work of the police, the White Paper gives the commissioner of police greater latitude to determine police plans and utilise resources required for policing, albeit in consultation with the minister of home affairs. The White Paper states that:

The Commissioner alone must have the direction and control of the Lesotho Mounted Police Service. No politician should be allowed to give the Commissioner or his officers instructions about particular police operations.²⁶⁰

Some argue that this provision is incompatible with the norms and standards of policing in a democratic society.

Because the LMPS enjoys semi-autonomy, some have contended that the police cannot be regarded strictly as part the Ministry of Home Affairs and subject to the bureaucratic red tape of the civil service. Matlosa²⁶¹ claims that the LMPS is a special unit within the Ministry of Home Affairs. Similar to the Defence Council, the police have established the Police Negotiating Council, through which staff interests are mediated and represented.

The White Paper introduces a new participatory approach to certain critical areas of the policing service – police–community partnerships, resource mobilisation and utilisation – as well as new police management, and a new directorate of police. This approach was designed to ensure that policing plans are accessible to the public and incorporate views and opinions from the public. For example, a consultative process involved consulting with communities in different regions, all feeding into the national plan. Based on the implementation of the annual plan, the commissioner of police is expected to produce an annual report and submit it to the minister of home affairs at the end of each financial year, who then reports to parliament.

The ombudsman submits a report annually to parliament. The core function of handling complaints is performed by the Investigations Unit of the

Ombudsman's Office. Complaints from the public have to be made in writing to receive official complaint status.

The Public Complaints Authority (PCA) is an independent statutory and civilian oversight body that monitors police abuse of power and human rights violations. It was established in 2003 in terms of Police Service Act,²⁶² but became operational only in 2005.²⁶³ Its primary objective is to oversee the operations of police, their conduct with the public, their general protection, and conditions under which they work. It is composed of four members drawn from the police, private law practice and judiciary. The secretariat of the PCA has 34 members of staff, including investigators and administrative staff.

The PCA cannot receive complaints direct from complainants. Legislation prohibits members of the public from approaching it with their complaints. Such complaints therefore have to be submitted through the commissioner of police or the minister of home affairs. The PCA can only investigate complaints it receives from the commissioner of police. The commissioner decides which complaints the PCA can investigate. Nor does the PCA have powers to summon police officers or to arrest them for criminal conduct. The arrest of a police officer can be made only by the police on the instruction of the commissioner. Further, on completion of the investigation, the PCA can only advise the police on how to proceed or refer cases to the ombudsman and assist in opening criminal cases against the police. This constitutes a serious limitation to the PCA.

In 1997 the army was called in to restore control after a significant mutiny by junior officers in the police. After these events there were renewed efforts at reform which led to the promulgation of the new Lesotho Police Act in 1998. The legislation included the creation of three oversight institutions, Lesotho Police Complaints Authority, the Inspectorate and a civilian Directorate of Policing. The directorate had been established a year before and operated with the Ministry of Home Affairs to support the administration functions in the police. A legacy of this period is that Lesotho and South Africa are the only other police organisations in the region to have collective bargaining arrangements with employees.²⁶⁴

The police generally do not take the PCA seriously because it has no real oversight power over them. Lack of recognition has often caused problems and frustrations which bring into question the level of effort the PCA can put into investigating complaints, knowing that they cannot do much to implement their findings. The PCA has had to address this challenge by interfacing and

working with the police to make them understand its mandate. However, to deal appropriately with this problem, its mandate must be extended to be able to summon and have access to police officers during investigations.

The Amendments to the Police Act in 2003 conferred more powers on the PCA by obliging all organs of state to cooperate with it. In 2005, the authority received 48 complaints and, at the end of the year, made recommendations concerning disciplinary action to the minister of home affairs and public safety.²⁶⁵ No action appears to have been taken, however. In 2009 this dropped to 20 complaints, of which 14 were investigated and seven were closed.

Lesotho also has a Directorate on Corruption and Economic Offences, established under the Prevention of Corruption and Economic Crime Offences Act of 1999. According to this act, the directorate is required to investigate complaints, prosecute corruption, subject to the Directorate of Public Prosecutions directive, and prevent corruption and educate against the evils of corruption. The directorate is mandated to investigate any complaint of corruption against a public body, including the police. There appears to be little interaction between the Directorate on Corruption and Economic Offences and the Directorate of Public Prosecutions.

The minister of justice, human rights and correctional services is the executive member responsible for ensuring that the LCS delivers on its mandate. In turn, the minister, permanent secretary and head of the LCS are important role-players in monitoring the services provided by LCS on behalf of government.

The Office of the Ombudsman has played an important part in ensuring that the human rights of people in correctional facilities – inmates and employees – are protected and respected.

To strengthen the oversight role of the LCS, the Minister of Justice, Human Rights and Correctional Services created the Human Rights Unit to assist the LCS in adhering to acceptable human rights standards. This unit has indicated that many important human rights issues still require closer scrutiny within the LCS. The rights of those detained in correctional facilities require priority monitoring.

ROLE OF CIVIL SOCIETY

NGOs and civil society organisations (CSOs) are influential in strengthening the democratic culture of the country. Organisations that work in the security

sector environment are often concerned with accountability of security institutions, abuse of power, and human rights abuses. Although there are many NGOs in Lesotho, few of these organisations work with state security institutions. Those that do so include South African organisations such as the ISS, the Centre for the Study of Violence and Reconciliation (CSVR), and the Electoral Institute of South Africa (EISA). A few Lesotho-based organisations also work with security institutions. These include the Transformation Resource Centre (TRC), Catholic Commission for Justice and Peace (CCJP), Women and Law in Southern Africa (WLSA), and Lecongo. The CCJP is one of the few organisations that monitor the rights of prisoners, police brutality and police abuse of vulnerable groups, including women and children. It was also instrumental in developing the National Vision and Strategy for the justice sector. The TRC advocates for reform of the police service in order to reduce incidents of police brutality and abuse of power.

Other civil society establishments that have emerged in the security sector, albeit still in their infancy, are trade union organisations. A staff association was formed to look after the interests of police officers, while a new union in Correctional Services was launched in February 2010. The absence of trade unions has successfully kept issues in security institutions out of the public domain.

LCS policies and regulations recognise the part that citizens and NGOs play in monitoring human rights and conditions of prisons. LCS prison regulations acknowledge visitation rights to correctional facilities by committees of chiefs, church ministers, representatives of the business community, advocates of the High Court, NGOs and citizens. These committees are authorised to visit any prison without the prior knowledge of the prison director, and are generally allowed to inspect correctional facilities. Church ministers may conduct church services in the facility with prisoners. There is no censorship as these committees are able to report their findings to the prison director and the general public through the media.

Officials from the ICRC and other international human rights groups are often permitted to visit and monitor conditions in correctional facilities and to report on them. In December 2007 a committee comprising government officials and the Lesotho Red Cross visited a number of facilities to evaluate the level of professional training and activities for inmates. The committee concluded that inmates received satisfactory professional training and guidance.²⁶⁶

This contradicted the conclusions of the ombudsman in 2008, who found that prisoners spent their days idling in crowded cells.

There are limitations to the civil society sector's engagement with the security sector, for example lack of funding and of recognition. Lack of government recognition has resulted in civil society and government operating in relative isolation of each other. Lack of capacity in civil society organisations and the difficulties of accessing security institutions have been aggravated by the lack of a clear framework for cooperation and communication between the government departments and civil society organisations.²⁶⁷

The media are important role-players in the oversight of security institutions. The media – electronic and print – are prominent in exposing abuses by the security institutions. The independent media have been more proactive. Four independently owned English-language weekly newspapers; four private radio stations; a private local television station, South African public television and global satellite television, as well as radio broadcasts, are widely available. These independent media have the reputation of exposing and criticising government services and performance. As a result, the relationship between them and government could best be described as hostile. State-owned or state-controlled media consist of one radio station; a daily newscast (one and a half hours) on a local television channel; and two weekly newspapers. All state media faithfully reflect official positions of the government.

KEY CHALLENGES AND RECOMMENDATIONS

Lesotho, despite the political challenges after the 2007 general elections and continued SADC mediation efforts to resolve the electoral dispute, is relatively stable. The country has undergone security reform measures that have seen the entrenchment of civil-military relations and the formation of oversight mechanisms for security institutions. These mechanisms, however, still require strengthening for effective oversight, particularly the parliamentary committees. Lesotho also has the requisite policy and legal frameworks, but the capacity to enforce this legislation remains wanting. There are serious constraints in its judiciary and it is hoped that the pending Judicial Administration Bill will resolve some of the challenges it currently faces. Lesotho's prisons lack basic infrastructure and many reports speak to the health risks this poses. We therefore recommend that:

- Parliamentarians should be capacitated to exercise their oversight duty
- There are capacity constraints in many of the institutions, particularly justice, the Office of the Ombudsman, Child and Gender Protection Unit, and prisons. There are also questions about the independence of the judiciary. These issues should be addressed in a comprehensive SSR programme involving all security services and the justice sector
- The violation of basic rights of accused persons by the police and of convicts by correctional service officers are areas of concern that need to be addressed

6 Mozambique

POLITICAL OVERVIEW

Like many Southern African countries, Mozambique's political history is steeped in colonial and post-colonial struggles. Colonial and post-colonial rule was dominated by weak administrative structures. Portuguese colonial rule under António de Oliveira Salazar (1932–1968) and Marcelo Caetano (1968–1974) constituted an autocratic and corporatist regime supported by the Catholic Church, the military and the secret police. Characteristic of the Portuguese *Estado Novo* (New State) was its violent approach towards any opposition.

By the 1960s the nationalist movements in the Portuguese colonies had begun to take militant action. In June 1962 three exiled Mozambique groups merged into a single new organisation, the *Frente de Libertação de Moçambique* (Frelimo) with Dr Eduardo Mondlane as its first president. In 1969 Mondlane was assassinated and Samora Machel succeeded him.

The decolonisation of Portuguese Africa occurred after a left-wing military coup in Portugal ousted the *Estado Novo* dictatorship that had run the country since 1926. The People's Republic of Mozambique came into existence on 25 June 1975, with Samora Machel as president. Soon after independence in 1976

Mozambique closed its border with Rhodesia. It also supported Rhodesian liberation movements and the African National Congress (ANC). This resulted in frequent commando raids into Mozambican territory by Rhodesian and South African forces. The government also had to contend with armed opposition from the *Resistência Nacional de Moçambique* (Renamo), created at the end of 1976.

After a peace agreement between Frelimo and Renamo was signed in 1992, Mozambique made remarkable progress in achieving and consolidating democracy, peace and stability. The country's first multiparty elections were held in 1994. In these elections Frelimo, which had ruled the country since independence in 1974, secured the majority of votes, though the political contest was extremely close. Frelimo has continued to rule since then. The transition of the presidency in 2004 from Chissano (known for moderation) to Guebuza (perceived as a hard-liner) brought with it a different style of politics. Guebuza has sought to tighten the grip of Frelimo on the state, economy and public life in general.²⁶⁸ This has heightened tensions between Frelimo and Renamo once again. However, Frelimo won by a landslide victory of 75 per cent in the 2009 elections.

Although Mozambique has experienced an impressive rate of economic growth, this has been concentrated in a few regions, and economic disparities remain a significant feature of the country. Donor-supported policies and reforms, however, have produced macroeconomic stability and rapid growth, which has positioned the country as a model for post-war reconstruction and economic rehabilitation.²⁶⁹ Frelimo's election promises concentrated on the youth, demobilised soldiers, corruption, and better administration/service delivery. This indicates that Mozambique's security challenges are largely internal, many still reflecting the repercussions of the civil war.

CONSTITUTIONAL, POLICY AND LEGAL FRAMEWORKS

Mozambique's constitution was approved and enacted in 1990. It is the foundation document for the security sector. The constitution defines the goals of the national defence force as protecting national independence, preserving the country's sovereignty and integrity, and guaranteeing the normal functioning of institutions and the security of citizens against armed aggression.²⁷⁰ The president is commander-in-chief of the armed and security forces. He has the power to:

declare a state of war and its termination, declare a curfew or a state of emergency, to sign treaties, to preside over the National Defence Security Council, and to appoint, exonerate or dismiss the chief of general staff, the police commander, the branch commanders of the armed forces, and other superior officers of the defence and security forces.²⁷¹

The Defence and Security Act 17 of 1997 provides policy direction for the security sector. The principles underlining the defence policy include:

- Collective responsibility of citizens for national defence, promotion of state security and public order
- The strengthening of national unity and the safeguarding of national interests
- Prohibition of compulsory conscription and voluntary enlistment into the defence and security services of citizens under 18 years
- Political neutrality of the defence and security establishments and their obligation to abstain from participating in actions or activities that could jeopardise the internal cohesion and unity of the nation
- The exclusive fidelity of the military to the constitution and other binding legal texts, and obedience to the commander-in-chief
- Respect for the use of legitimate force where necessary to accomplish peace and security, the emphasis being on conflict prevention or the negotiated settlement of conflicts
- The creation of a peaceful and secure climate at national, regional and international level
- The construction and maintenance of a stable and peaceful international order²⁷²

The act was supposed to precede sector legislation, but the defence sector is the only one that has produced such legislation.²⁷³

The Police Force of the Republic of Mozambique (PRM), the Criminal Investigation Police (PIC) and the Rapid Reaction Police (PIR), which is a paramilitary force, fall under the Ministry of the Interior.²⁷⁴ The police force in Mozambique has been described as 'not consistently subject to the law, or ... adequately accountable, accessible, impartial, representative or transparent'.²⁷⁵ There is no White Paper on Policing in Mozambique and a paucity of legislation governing the police.

The legal framework on prisons consists of the constitution, the body of domestic statutory norms,²⁷⁶ and binding and non-binding international norms and instruments, for example the UN Convention against Torture, UN Standard Minimum Rules on Treatment of Prisoners, and Kampala Declaration. The main instrument regulating prisons is legislation dating back to colonial times. However, amendments and incorporation of international instruments with improved standards provide an adequate regulatory basis for prison management and for the proper treatment of prisoners. Criticism generally focuses on the fact that statutory norms lack provisions dealing with parole conditions.²⁷⁷ In addition, serious questions pertain to compliance with the legislation and norms. Although there is general recognition and acceptance that prisoners retain the rights prescribed under the law, the overall observation is that once they are deprived of their liberty, other basic rights are compromised.²⁷⁸

Mozambique does not appear to have a code of conduct or any related document that provides clear rules for security officials and a supporting disciplinary code and procedure.

The constitution, however, makes provision for the protection of human rights, including the right of citizens to access courts, the right to information, freedom of the press, independence of the media, and broadcasting rights.

DEFENCE

At independence, the new state hurriedly formed a new national army from the guerrilla forces, known as *Forças Armadas de Moçambique / Forças Populares de Libertacodo de Moçambique* (FAM/FPLM). The government then introduced compulsory conscription for all citizens, male and female, aged 18 to 35, so that by 1980 the 'former 1 000 strong guerrilla force was not only transformed, but had increased in size to some 70 000'.²⁷⁹ This army was soon tested by the offensive from South Africa's destabilisation campaign and by the civil war that erupted. By the late 1980s the army was in dire straits.

In the short period of a decade, the standard of living in Mozambique had sunk to its lowest ebb, and the euphoria of independence was completely eclipsed ... By the end of the 1980s, the Mozambican state was essentially inoperative and incapable of supporting an army that had grown immensely and demanded resources that did not exist. The armed forces

were being heavily criticised within state structures, and the intimacy between the party, the state and the armed forces was all but lost.²⁸⁰

After the civil war ended, the new *Forças Armadas de Defesa de Moçambique* (FADM) was formed through integrating the armed forces that had participated in the civil war. The army, air force and navy form the core of the military sector. Mozambique does not have a paramilitary force.²⁸¹ Protocol IV of the General Peace Agreement limited the armed forces to 30 000 (15 000 from each of the two parties, of which 24 000 would be in the army, 4 000 in the air force and 2 000 in the navy). The defence force has not reached this capability, for it has proved unattractive to the youth as a source of employment. The army as a whole has been severely impacted by the budgetary restrictions that were imposed after the Nkomati Accords.

POLICING

The police in Mozambique have undergone a major transformation and any evaluation must consider its historical context, noting the major changes that have been implemented over the past 25 years.

The *Polícia Internacional e de Defesa do Estado* (PIDE, International and State Defence Police) was the main tool of repression during colonial rule. Although the name 'PIDE' was used only from 1945 to 1969, the whole network of secret police forces that existed in the 40 years of the regime was commonly known as PIDE.²⁸² PIDE infiltrated agents into almost every underground movement, including the Portuguese Communist Party and the independence movements in Angola and Mozambique. PIDE intensified its actions during the Portuguese Colonial War, creating a successful paramilitary unit called *Flechas* (Arrows) that participated in covert operations. With the start of the nationalist struggles in Angola, Guinea and Mozambique, twelve mobile police units were sent to Africa.

Information on the transfer of power and the creation of new police force in Mozambique immediately after independence is sketchy at best. Frelimo established a transitional government in Lourenço Marques on 25 September 1974. They then organised villages, neighbourhoods and workplaces to maintain the functioning of infrastructure, and to prevent racial conflict and settler sabotage. *Grupos Dinamizadores* (Dynamising Groups) were set up to facilitate the transfer of power.

A special secret police unit, the National Service of Public Security (SNASP), was formed to provide additional protection for ‘interests of the state’. Responsible directly to the president, SNASP was tasked to ‘detect, neutralise and combat all forms of subversion, sabotage and acts directed against the People’s Power and its representatives, the national economy or against the objectives of the People’s Republic of Mozambique’. As one Mozambique resident complained, ‘It is Frelimo’s PIDE [the dreaded Portuguese secret police]. There is no *habeas corpus* or means of appeal. If they pick you up, that’s it.’²⁸³

On 26 May 1979 a law was passed creating the *Polícia Popular de Moçambique* (PPM).²⁸⁴ This replaced the *Corpo da Polícia de Moçambique* (CPM), which operated during the colonial period and the first few years of independence. There were no specific recruitment procedures for the new police. The police performed mainly the functions necessitated by war. As a result, distinctions between internal and external security functions were not apparent. The police and the intelligence agency were subordinated to the military. One of the requirements for recruitment to the police force was to serve in the army. Intelligence officers carried a military identity document.²⁸⁵ The police force simply ceased to exist in large parts of the country. Where it did exist, it was paramilitary in nature. Politicised, it in effect operated as an arm of Frelimo.

In early 1991 a new constitution was negotiated and the parliament was renamed *Assembleia de Republica* (Assembly of the Republic). In July parliament passed a law abolishing the state secret police, SNASP, replacing it with State Information and Security Services (SISE). SISE was exclusively an intelligence-gathering agency with no police powers.²⁸⁶

Law 19/92 created the *Polícia da República de Moçambique* (PRM) on 31 December 1992.²⁸⁷ The police service was given a general command equivalent to a national police commissioner. Its functions were to guarantee public order, safety and security, respect for the rule of law, and the strict observance of citizens’ rights and fundamental liberties. In 1993, the police statutes were approved by Cabinet Decree 22/93.²⁸⁸

Large numbers of soldiers were transferred to the police. This resulted in ‘demoralised armed forces, with little capacity to protect the territory, in spite of an excess of weapons, and a police force with excess staff consisting of men without training in police service.’²⁸⁹

The most challenging problems facing the police force in the initial years of the transition included low standards of education and training, lack of objective criteria in the selection of police candidates, predisposition among police officers to take bribes and lack of resources.

Only 20 000 police agents currently enforce the law in the whole country.²⁹⁰ This translates to one of the lowest ratios of police officers to citizens worldwide, with 1 police officer to 1 089 citizens (compared with 1 to 450 in South Africa).²⁹¹ It is not surprising that with such thin coverage it is widely believed that many crimes go unreported and that crime rates are much higher than reported figures.

Furthermore, the apathy of the police towards overcoming insubordination is public knowledge. Low salaries and weak incentives for police and investigators make these unattractive career options.²⁹² Efforts have been made to improve recruitment and to provide training to the police, particularly with the establishment of the Academy of Police Sciences (*Academia de Ciências Policiais*, ACIPOL). However, to make substantial improvements in policing coverage of the country, greater funding will be required to pay a larger salary roll and provide training.²⁹³

With the additional impact of HIV/Aids on the police force, in 2006 a representative of the Ministry of the Interior said that the PRM was losing 1 000 police officers a year to HIV/Aids. There is growing urgency to address this issue.²⁹⁴

In spite of verified efforts to combat corruption, generalised corrupt behaviour and practice continue among members of the police. Lack of confidence is problematic from the perspective of state/institution legitimacy and social trust, as well as in terms of overall police operations and activities. This is corroborated by further survey findings which indicate that 76.2 per cent of people do not ask the police for help in dealing with local problems. Such lack of trust may undermine the new community policing initiative in which citizens are supposed to cooperate with the police in identifying criminals.²⁹⁵

CORRECTIONAL SERVICES

The Ministry of Justice and the Ministry of Interior are responsible for prisons, and share duties of general management and operation of the prison system. The Criminal Investigation Police, under the Ministry of Interior, are responsible

for awaiting-trial prisoners, while the Ministry of Justice deals with the sentenced prison population and generally oversees the prison system. Recently the *Serviço Nacional das Prisões* (SNAPRI, the National Prison Service) was established to harmonise the mandates of the two departments.

In 2007 the country had an estimated prison population of approximately 15 000.²⁹⁶ Information presented by the National Director of Prisons at the general meeting of the Ministry of Justice in mid-2008 indicated that 8 749 prisoners had been sentenced and the remainder were awaiting-trial prisoners. An estimated 8 559 prisoners serving sentences are male and 190 are female. The majority of the prison population (61%) are young men, often from economically less advantaged families.

Poor coordination between entities responsible for prison management has had disastrous consequences for arrested and detained persons. Overcrowding of prison facilities is caused by lengthy pre-trial detention periods and failure by the state to meet the procedural safeguards for detention. The situation in the prison system is aggravated by the backlog of cases waiting to be heard in the courts. Despite these difficulties, SNAPRI tried to reduce the number of prisoners who remained in prison after completing their sentences. At the level of detention facilities, the situation was improved in 1993 through the institutionalisation of the *juizes de investigação criminal* with the mandate to assess whether the terms of arrest were legal. This helped to reduce the time that detainees remained in custody.

Since 2008 SNAPRI has been provided with an autonomous budget. In previous years, funds allocated to the security sector were administered by the Ministry of Justice. The figures illustrate an increment in funding allocated to the security sector, starting at 250 000 MZN in 2006; 300 000 MZN in 2007; and most recently 350 000 MZN in 2008.²⁹⁷ However, the funds allocated are not in line with planned activities and the number of inmates in prison facilities.²⁹⁸ In most cases there are disparities in the funds allocated among prison facilities. However, funds have not been sufficient at any given time to address the needs of the system as a whole. Also, unattractive salaries for officials as a result of the insufficiency of the budget allocation may contribute to corruption, which has further negative consequences for the prison system.

Appropriate training of officials is lacking, evidenced by the increasing numbers of cases of human rights violation in prisons. Recourse to violence by officials and the use of inappropriate and inhumane methods of investigation

to obtain evidence (that is, torture) remain issues for concern. In addition, old-fashioned colonial features of the current system illustrate the challenges facing the legislature in attempting to modernise the system as a whole. In addition, most parliamentarians lack the knowledge required for legislative drafting.

Currently, with overcrowding of prison facilities and the continued non-separation of female and male prisoners, the institutional response to particular needs of women, children and minority groups falls far short of minimum standards. Within the prison system itself there are no specialised services for victims of sexual violence. In this regard the system is lacking and further attention is needed. However, at a broader level there is a special sub-department, the *Gabinete de Atendimento da Mulher e Criança* (Women and Children Services Department), which attends to victims of sexual violence in general. This specialised branch of the security services has its offices at police stations and works under the Ministry of Interior.

The 2008 US Department of State Report on Human Rights in Mozambique pointed out the deaths of inmates due to diseases such as HIV/Aids, malaria and tuberculosis as some of the persistent problems affecting prisons in Mozambique.²⁹⁹ Excessive use of force and brutality by police also constitute matters of deep concern.³⁰⁰ To summarise, prison conditions are well below an acceptable standard.

JUDICIARY

The constitution makes provision for the independence of the judiciary and for certain courts: Supreme Court and other courts of justice; Administrative Court; courts martial; customs courts; fiscal courts; maritime courts and labour courts (but none of the latter seems to have been established). The constitution also calls for the creation of a constitutional court, but this has not been established either. The president appoints the president and vice president of the Supreme Court.

The justice sector – including the courts and the police – is one of the weakest sectors in Mozambique. The Global Integrity Report for Mozambique (*Relatório de Integridade Global para Moçambique 2007*) classified the rule of law as ‘weak’ and compliance with the law as ‘very weak’.³⁰¹

The judicial system is structured to include provincial, city and district courts, which co-exist with other specialised judicial institutions such as the

administrative courts. Community courts were not part of the formal judicial system initially, but have subsequently been included under the 2004 constitution.³⁰² However, the law recognises their existence, but there is no mechanism that links the community courts to the other courts in the judicial system. It becomes a matter of concern where the majority of the citizenry use the community courts for remedies. These courts need to be formally tied to the broader judicial system and their decisions need to be ascribed the judicial power afforded to other judicial courts. Further, few lawyers provide legal services to the citizenry. Lawyers are concentrated in urban areas and their fees usually place their services beyond the reach of ordinary Mozambican citizens. The government has attempted to address this through the *Instituto de Patrocinio e Assistencia Juridica* (IPAJ), which provides free legal advice to the indigent. However, owing to financial constraints and lack of qualified personnel, the desired results have not been achieved.

Within criminal justice, reform requires an independent and highly educated judiciary, prosecutors and defence lawyers, well-trained and representative police, humane correction staff and an appropriate prison infrastructure. These all need investment in universities and professional academies. Low levels of education, obsolete equipment, and poor quality physical infrastructure characterise the main part of the system. As a result of this lack of capacity, Mozambicans have recourse to popular militias.³⁰³ In general, according to informants, ‘the police do not defend, the courts do not react, and there are no institutions’.³⁰⁴ Private security companies continue to be lucrative, as can be deduced from their large numbers. They exist and grow in a country with a police force that has no capacity to counteract transnational criminal networks.³⁰⁵

INDEPENDENT OVERSIGHT AND ACCOUNTABILITY

Mozambique has a parliamentary portfolio committee system. The Minister of Defence accounts to parliament through the Joint Standing Defence and Public Order Committee established through the 1997 Defence and Security Act. The committee has oversight and investigative powers in the area of the security sector. Like most Southern Africa countries, Mozambique suffers from partisan behaviour by parliamentarians and sometimes limited knowledge of issues being discussed. Mozambique can be commended, however, for opening up space for civil society to participate in these parliamentary committees.

Defence

Civil-military relations have become entrenched in Mozambique where the Ministry of National Defence (MOND):

is politically responsible for the management of the military component of defence policy, the administration of the armed forces, providing logistic support, and overseeing and controlling the resources provided by the government.³⁰⁶

The minister is in charge of political oversight and implementation of the national defence policy, and directs the budgetary process.

There has also been a progressive development of civil–military relations in post-war Mozambique, especially in relation to the respect and obedience shown by the armed forces to democratically constituted authorities and their non-partisan posture in a multiparty environment.³⁰⁷

The Minister of Defence is responsible for chairing the Defence Council, which comprises the chief of general staff and the commanders of the three services (Army, Air Force, and Navy).

The MOND has serious capacity-building challenges in terms of management, recruitment and maintenance of skilled personnel.³⁰⁸

Mozambique has a Parliamentary Committee for Defence and Public Order but it is very weak as MPs still struggle to determine their oversight role and responsibility in this relatively closed sector.

Police

In the annual report for 2007, Amnesty International raised a number of concerns about the behaviour of Mozambique's police, including the use of excessive force, extra-judicial executions and torture. As a precondition, it recommended more severe accountability mechanisms at internal and external level.³⁰⁹

There are other structural concerns in accountability of the police. For example, no government-funded independent external mechanism has been

established by law to investigate complaints against the police, and implementation of such an oversight mechanism is urgently needed.³¹⁰

Mozambique does not have a national human rights commission, although discussions within government for the establishment of such a body have begun. A human rights commission could play an important role in ensuring a greater degree of independent oversight of the police and prisons. Legislation creating an ombudsman (*provedor de justiça*) was approved by parliament, but the ombudsman has not yet been appointed.³¹¹ The ombudsman will provide an additional mechanism for the defence of rights outside the court system, and should be appointed speedily to enable this work to begin. Civil society should lobby and advocate for its establishment and should be involved in the process of appointment of the ombudsperson by parliament.³¹²

Prisons

Confusion remains over the mandates and responsibilities of security and justice service providers. It has arisen from features of the colonial era, in which mandates in the domain of security and justice were shared between the Ministry of Interior and the Ministry of Justice. Further, knowing that the recently established SNAPRI falls under the Ministry of Justice, it causes confusion over its supervisory and monitoring functions, for prison facilities fall under the control of the Ministry of the Interior.

The legal framework dealing with the procedures for legislative drafting is clear. However, the same cannot be said about policy-making processes. While legal drafting would require broader participation of the citizenry, there are no guidelines dealing with public participation requirements applicable to policy-making processes. The main criticism is that participation in policy making is seldom extended to ordinary citizens, but is limited to scholars, members of the bar association, and holders of security and justice mandates.

The main actors in the security and justice services are appointed by the president.³¹³ Other positions are established and occupied by nominees selected by people appointed by the president. There is thus a likelihood of political control over security and justice services, even if the actors themselves are not politically active.

SNAPRI has an adequate internal control mechanism that is structured to respond to the challenges of the prison system. However, because the external

oversight mechanisms are not sufficiently assertive, this creates space for implementation problems, lack of accountability and general governance problems and corruption. Oversight structures report to the Ministry of Justice, under which SNAPRI falls.

The focus of reform should be placed on the implementation of corrective measures applicable to prison officials. Reported cases of maltreatment of prisoners and human rights violations have not been properly addressed. Appropriate follow-up on such cases seldom culminates in the punishment of officers who are in breach of the rules and regulations of the prison system.

Human rights training for SNAPRI staff and equipping the legislature with knowledge of international standards will help to improve monitoring and accountability in the prison system. Actions also need to focus on providing technical assistance to the legislature and bodies such as the *Unidade Técnica de Reforma Legal* (UTREL), which is currently responsible for undertaking reform in the public sector.

ROLE OF CIVIL SOCIETY

Mozambique until the last decade did not have a vibrant civil society, compared with its neighbours, particularly Zimbabwe and South Africa.³¹⁴

Since independence and after the civil war, civil society in Mozambique has largely been preoccupied with reconstruction, poverty and development.³¹⁵ There are thus more development-oriented NGOs, fewer human rights-centred organisations, and far fewer security-oriented NGOs.

The General Peace Agreement of 4 October 1992 was an opportunity for civil society participation in SSG. The agreement included a variety of aspects to do with security such as integration of the demobilised and other fragile groups into society; regulation of the activities of the military; economic and social reintegration of demobilised soldiers; and professionalisation of the police and state intelligence sector.³¹⁶

Through programmes such as the Tools for Arms (TAE) project and 'Arms for Hoes' civil society played a critical role in the disarmament of ex-belligerents and consequent re-integration. Ex-belligerents were encouraged to voluntarily surrender their weapons in exchange for entrepreneurship training and development assistance to enable them to engage in small-scale economic activities. Tools for Arms was a complementary project to the government-led Operation Rachel.³¹⁷

Although civil society did not seize the moment, the 2000 and 2001 floods were an opportunity for civil society to work with the armed forces in protecting the citizens. The floods in themselves revealed the need for a broadened mandate of the security sector as well as re-thinking the concept of security.

From a policy perspective, there is no evidence to show civil society influence on security policies and laws. For instance, civil society was not actively involved in the formulation of the 1997 Defence and Security Act.

Members of civil society in the human rights sector have been campaigning against allegations of inefficiency, bribe seeking, corruption, lawless conduct, human rights abuses and complicity with criminals. They allege that the police and military composition reflects significant gender and regional biases. According to the Security Sector Reform Network, press and human rights groups have had some success in bringing about changes in coercive policing methods. However, intimidation and death threats are not uncommon against those who seek to expose police abuses, along with corruption in business and politics.³¹⁸

Non-state security and justice actors include national and international NGOs as well as religious groups. The *Liga dos Direitos Humanos* and other international non-government organisations (INGOs, eg Amnesty International) engage actively on issues regarding prisons and prisoners' rights. These pressure groups are influential to the extent that they are capable of raising public awareness and influence government policies on the prison system. A MoU allows the *Liga dos Direitos Humanos* to undertake inspections at prisons; verify the legality of detentions; and propose measures to be taken in cases of illegal detention. Despite the need for such monitoring visits, the impact of inspections by the *Liga dos Direitos Humanos* is limited when the final decision rests with the Ministry of Justice. There is growing interest by other INGOs, including Amnesty International, in making public all reports pertaining to the situation of prisons in Mozambique.

Universities and academic institutions, though, seldom engage in empirical studies dealing with the prison system. However, scholars make sporadic comments in the media. This contributes to raising public awareness and influences policy makers on safety and security in prisons. In addition, through their law clinics and other related bodies, universities have become important players in providing free legal services to detained suspects. Besides support with food and other resources, religious groups have also become important in supporting prisoners and ex-prisoners.

Information and data regarding the prison system are seldom made available to the public. In most cases such information can be obtained only from the annual reports of government institutions that administer the security and justice services. Owing to the constraints in obtaining information, a limited number of external stakeholders (eg *Liga dos Direitos Humanos*) have access to information and are able to hold security and justice institutions accountable. Certainly more groups could engage in litigation and promoting general public interest in prisons if the system was more transparent.

The Ministry of Defence occasionally engages with civil society on security issues. For instance, a seminar was held on defence and security issues to which civil society was invited to participate. An analysis of the NGO workshop report, however, reveals that NGO participants were not knowledgeable about the security policy intricacies of Mozambique.³¹⁹ The Ministry of Defence also opened up to civil society to discuss the law on conscription in 2002 and 2003. NGOs argue that in spite of these concessions, on many occasions civil society has not been informed about security developments or been given enough room to participate. The armed forces in particular remain mostly closed to civil society.³²⁰

Both the legal framework and the political environment are conducive to a robust media. On occasion there have been interesting debates in the media on security and justice issues, for example, on the escape of Anibal dos Santos and the murder of well-known journalist Carlos Cardoso.

Civil society in Mozambique needs to utilise the Committee for Defence and Public Order in order to enhance civilian oversight and meaningfully influence the legislative agenda as far as SSG is concerned. In addition, it needs to push the Ministry of Defence to increase the frequency of all-stakeholder consultations on matters of security.

On its part, civil society involvement with the security sector should go beyond service delivery and development-oriented programmes to research and analysis of policies, strategies, budgets and overall performance of the security sector. While the development for peace paradigm is a good start, there is need to examine a number of security matters in order to ensure compliance with international standards and agreed instruments. The interviews with the umbrella body of NGOs in Mozambique showed that there is a general capacity gap in terms of conceptualisation, analysis and advocacy capacity of civil society on SSG.³²¹

Civil society in Mozambique should push for the establishment and effective functioning of oversight institutions such as Police Complaints

Commission, Security Services Commission and Human Rights Commission. These institutions will significantly contribute to the accountability of the security sector.

KEY CHALLENGES AND RECOMMENDATIONS

Mozambique's security sector challenges stem largely from its civil war. It has undergone extensive security sector reform measures that downsized its security personnel and created the necessary civil oversight. However, many gaps in this country's security sector need to be addressed. An overview of the policy and legislative environment indicates that there is no overarching security policy, no White Paper on police or correctional services, no police act, a lack of codes of conduct for security institutions and that legislation governing prisons is dated. Where legislation exists, there appears to be a lack of compliance to it. Infrastructure and human resource capacity within the security sector are sorely lacking. Mozambique has one of the lowest ratios of police officers to citizens worldwide. The personnel in the security services appear to be largely demoralised and susceptible to corruption.

Although Mozambique has a Ministry of Defence and a Joint Standing Defence and Public Order Committee, the MOND lacks skilled staff and the parliamentary committee suffers from partisanship. There is no government-funded independent external mechanism to investigate complaints against the police; nor is there a human rights commission or an ombudsman. Within the prison system there are no specialised services for victims of sexual violence. Appropriate training of officials is lacking, evidenced by the increasing numbers of cases of human rights violations. We therefore recommend the following:

- Create an overall national security policy
- Formulate through an inclusive process a white paper on policing and follow through with a police act
- Establish codes of conduct for all the security institutions
- Revise legislation governing prisons
- Adequately resource security sector institutions
- Introduce firm measures to deal with corruption in the security sector
- Establish a human rights commission, police complaints commission, security services commission and an ombudsman

- Civil society and the legislature need to be capacitated in order to provide effective monitoring and oversight of the security sector
- In general the criminal justice system requires an independent and educated judiciary, prosecutors and defence lawyers, well-trained and representative police and correction staff and an appropriate prison infrastructure

7 South Africa

POLITICAL OVERVIEW

The first non-racial democratic elections were held in South Africa in 1994. The country's chequered past was characterised by legally constituted racial discrimination under the apartheid regime of the National Party, which ruled from 1948 to 1994. The apartheid doctrine promoted separate social development, unequal education, intrusive and harsh security measures, residential segregation and job discrimination. Through the selective allocation of resources and politicised use of state power, the white minority held on to power in the face of violent opposition. The African National Congress (ANC), formed in 1912, as well as other liberation movements, actively mobilised against the apartheid state. They formed their own armed wings that were stationed in various parts of the continent. The South African state thus became a battleground between the security forces, armed liberation movements and the majority of black citizens who engaged in decades of protest.

By the early 1990s, the apartheid regime had been placed under increasing national and international pressure to reform and adopt a more human rights respecting and inclusive system of governance. Formal constitutional

negotiations began in 1991, and in 1993 an interim constitution was published that called for equal voting rights and a bicameral legislature with a regional system of governance.

In 1994, under the leadership of President Nelson Mandela, a new era in South Africa's history began. The government reformed all its major legal frameworks, institutions and practices to give effect to its democratic ideals. In 2008, it ranked fifth out of 48 sub-Saharan African countries on the Ibrahim Index of African Governance, scoring well on the categories of rule of law, transparency and corruption and participation and human rights.³²²

In 1996 the Truth and Reconciliation Commission (TRC), led by Archbishop Desmond Tutu, was established to investigate human rights abuses perpetrated during the apartheid era. The commission was seen as a vehicle for reconciliation and a way of easing the pain of decades of injustice, a crucial component of the transition to democracy. Despite the state's failure to institute community reparations as recommended by the TRC, the commission has generally been regarded as successful, with many countries using the same model to address human rights violations after difficult political changes, for example in Sierra Leone and Liberia.

Under Mbeki's leadership, from 1991 to 2008, South Africa positioned itself as a regional economic powerhouse and became ranked as a middle-income country. It is a member of G20, World Trade Organisation (WTO) and other world economic forums. It dominates Southern Africa's trade and investment flows, and plays a vital role in regional and continental institutions such as the AU, SADC and the Southern African Customs Union. South Africa was instrumental in pioneering the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM) and is host to the Pan-African Parliament. In October 2006, South Africa was elected by the United Nations General Assembly to serve as a non-permanent member of the Security Council for a two-year term.

Regional security and conflict management have been key characteristics of South Africa's foreign policy. It has been active in conflict prevention, peacebuilding and peace-making efforts in Africa, and has contributed significantly to peace-keeping missions. The country helped to broker peace agreements in Burundi, the DRC, Ivory Coast and many other countries. South Africa was instrumental in mediating Zimbabwe's brokered peace agreement for an inclusive government between the Movement for Democratic Change (MDC) and ZANU-PF.

South Africa, however, has many challenges. Party infighting saw the ousting of Mbeki in 2008, and the inauguration of Jacob Zuma as president after the 2009 general elections. There continue to be tensions within the tripartite political alliance. The country's main problem areas are poor service delivery, producing a spate of protests in the country; high crime rates; overburdened justice and correctional services; increasing corruption; the burden of HIV/Aids; and xenophobia, which led to violent outbursts in 2008. South Africa is marked by stark inequalities that remain racialised. Skill shortages, logistics and maintenance challenges are evident across all spheres and departments of government.

CONSTITUTIONAL, POLICY AND LEGAL FRAMEWORKS

The advent of democratic rule in South Africa resulted in comprehensive and fundamental reforms to state security architecture. ANC policy guidelines, adopted in 1992, outlined the approach to security and intelligence in a democratic state. These guidelines emphasised that the focus was on the creation of legitimate security institutions because:

the apartheid regime relied on its formidable police, defence and intelligence structures to maintain the system of apartheid and minority rule and to suppress popular resistance to that system ... The South African security institutions themselves developed a racist, closed, secretive, undemocratic structure, lacking legitimacy in the eyes of the people. The process of democratisation under way in our country will not be complete without addressing this problem.³²³

The country has made great strides in its journey towards democracy. In 1996 it adopted a new constitution that was hailed as one of the most progressive in the world. The 1996 Constitution of South Africa (Act 108 of 1996) establishes the requisite legal basis for the democratic transformation of state security structures. Chapter 11 of the constitution outlines the principles that govern the security sector, establishes the foundation for democratic civil-security relations and provides a constitutional requirement for parliamentary oversight. The constitution also prohibits members of the security services from prejudicing legitimate political party interests or furthering in a partisan manner the interest of a political party.

Establishing democratic control of the security services was a key requirement of security sector transformation. Security governance in the apartheid era was ultimately vested in the executive, with little parliamentary, judicial or civilian involvement. The security services were highly centralised entities with weak civil-security relations and a general lack of legitimacy.

In addition to the constitution, defence affairs operate within the policy and legal frameworks articulated in the White Paper on Defence, Defence Review, Defence Act and the code of conduct. The White Paper on Defence provides the normative framework within which defence in a democracy should be managed. The White Paper was comprehensive for its time (written in 1996), but has become somewhat dated: it has been overtaken by international, global political, economic and security events.

The Defence Review (1998) was a complementary document to the White Paper, designed to provide a force design/structure for the SANDF. This, too, has been surpassed by events, for numerous operational developments illustrate that the SANDF is not appropriately designed and funded in line with the levels of involvement, particularly in peace missions.

The Defence Act (Act no 42 of 2000) replaced the old act of 1957. The drafting of defence policy was an open consultative process that gave the Defence Force new legitimacy. The current revision of defence legislation, however, is not vested with the same inclusive and transparent qualities as the previous process.

The 1994 White Paper on Intelligence is the definitive and guiding policy document on the structure, nature and functions of a democratic South African intelligence community. The White Paper recognised that the reform of the intelligence dispensation would entail comprehensive structural transformation as well as fundamental changes in the nature of intelligence. According to the White Paper, reshaping and transforming intelligence in South Africa 'should start with clarifying the philosophy, and redefining the mission, focus and priorities of intelligence in order to establish a new culture of intelligence'.³²⁴ This new culture of intelligence in the post 1994 dispensation was based on a broad definition of security and national interest, instilling a system of control mechanisms and respect for human rights.

The law and policy governing policing in South Africa is clear. The South African Police Service (SAPS) is governed by the South African Police Service Act, 1995. However, the business of policing is affected by a range of other laws, notably the Criminal Procedures Act, Domestic Violence Act, 1998, Firearms

Control Act, 2000, Prevention of Organised Crime Act, 1998, Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 and the Child Justice Act, 2009. This is an evolving field and currently legislation before parliament includes that on forensic procedures, the suppression of terrorism and on second-hand goods.

Significant law making is planned for the short to medium term. A promised overhaul of the SAPS Act was postponed for five years and is now scheduled for 2011. A strategic plan for the SAPS for 2011–2016 is being drafted and provides an important opportunity to engage with SAPS operational priorities and planning for the forthcoming five-year period.

The White Paper on Corrections in South Africa (2005) remains the overarching framework for the Department of Correctional Services (DCS), but delivery of this vision has been slow. Whether the White Paper is useful from an SSG perspective needs to be critically examined. Some commentators have argued that the White Paper is too ambitious and will achieve little more than setting the department up for failure. The central problem in implementing the White Paper appears to be confusion and uncertainty among operational-level staff on how to fulfil their job functions and, compounding this, the absence of a valid performance monitoring system. The focus of the DCS on the White Paper resulted in the lack of prominence that the Correctional Services Act (CSA) receives in guiding the department's decision making, resulting in increased litigation by prisoners. Fundamentally, staff of the DCS are not well versed in the CSA.

The Private Security Industry Regulation Act, 2001, provides for the regulation and oversight of the private security industry through the Private Security Regulatory Authority (PSIRA). The act provides for the registration of security companies and guards and for a code of conduct, but not for overseeing actions of individual security industry personnel.

DEFENCE

The overhaul of the defence sector as part of the larger security architecture was vital for the post apartheid state.

... the overarching goal is to make the armed forces reflective of the character of our democratic society so as to ensure reliable, effective and loyal defence ... underpinned by civil control.³²⁵

This galvanised a process of reform, in 1994, when eight³²⁶ armed groups (statutory and non-statutory) were integrated into the South African National Defence Force (SANDF). The shift to a more democratically controlled defence sector required a carefully crafted strategy. Central to this shift was the change in approach to security in South Africa, limiting the internal deployment of the forces. Another significant change was the inclusion of civilians in the overall decision-making process on military affairs. The introduction of concepts such as civil-military (civilians, politicians and the military) relations into the defence sector contributed to ensuring good governance and effective defence management.

The Department of Defence and Military Veterans (DoDMV) (as it has been known since May 2009) comprises the civilian Defence Secretariat, the SANDF (military regular and reserve component) and a separate Military Veterans component (added to the department in March 2010). The DoDMV is under the political leadership of a civilian minister who is accountable to the president of South Africa, who in turn reports to the commander-in-chief. She³²⁷ is responsible for ensuring that the department performs its statutory functions as well as political oversight of defence.³²⁸ The minister is also responsible for the alignment of departmental plans with national imperatives and the delivery of security services within the specified budget. These functions are executed primarily through the statutory Council of Defence (COD) that comprises the minister, deputy minister, secretary for defence and the chief of South African National Defence Force. The COD is responsible for dealing with 'any matter that might affect the functions of the minister in respect of the Department'.³²⁹

Although the minister is the executive authority for the department, the secretary for defence and chief of the SANDF are responsible for the day-to-day running of defence through the Defence Staff Council (DSC). The DSC consists of the secretary for defence, the chief of the SANDF and all chiefs of divisions and services. The secretary for defence is the head of department and the accounting officer of the department to parliament and responsible for the formulation of defence policy. He or she is therefore the principal advisor to the minister on defence policy. Other responsibilities include managing the weapons acquisition process and providing parliamentary liaison services to the DoD. The chief of SANDF commands the SANDF, translating defence policies into military strategies and is responsible for plans and budgets. He or she is the minister's principal advisor on military matters and the implications of defence

operational commitments, including directing activities of the defence staff. Collectively, the chief of SANDF and secretary for defence are responsible for seeing that the defence force is structured and managed as a disciplined force.

The Zuma administration agreed to make military veterans a priority and incorporated them into the mainstream of defence, under a newly created department that will report to the minister of defence on military veteran issues.

Civil-military relations have always been an important aspect of defence management in post-apartheid South Africa. It almost preceded any other activity on the transformation agenda, as it was clear that a solid and robust civilian-military mixture would be established to ensure that the military subscribed to principles, norms and values embedded in democratic societies.

Capacity of the defence sector

The 1994 integration process, with its aim of rightsizing the military, brought force levels down from over 100 000 to a manageable 74 293. The total strength of the DoD regular component (uniformed and civilians) is 61 713. This total is made up of 50 003 uniformed members (39 507 male and 10 496 female) and 11 710 civilians (6 297 male and 5 413 female). These figures illustrate a shortfall of 12 580, which constitutes the non-staffed/vacant positions in the military.³³⁰

In 2000, the military realised that its force was ageing, particularly in the South African Army. The Military Skills Development (MSD) programme was introduced in 2002 to respond to the problem. This programme was intended to rejuvenate the armed forces and enhance the effectiveness, combat and mission readiness of the military. One of the unintended consequences was that it addressed the issue of gender, another government priority.

The primary role of the military, according to the constitution, is to defend and to protect the country against external military aggression. The re-equipment of the military at the end of the century, mainly with hardware for conventional forces, illustrates the focus on this role. To perform this task, the SANDF structured itself to consist of the South African Army; South African Air Force; South African Navy; and South African Medical Health Services. One of the complexities for the South African military is to create a balance between primary and secondary roles because of the misalignment of a force that is equipped for a certain role (primary), but performs another role such as peacekeeping (secondary).

Combat readiness of the military, which should be a good indicator of capacity of the force, is a matter of concern. There has been little information on the readiness of the South African Armed Forces, although they have been extensively involved in peace missions in Africa, with relative success.

INTELLIGENCE

The White Paper on Intelligence provided the policy framework for the development of the current intelligence structures, which include domestic and foreign intelligence (National Intelligence Agency and South African Secret Service), military intelligence and crime intelligence, as well as a mechanism for coordination (National Intelligence Coordinating Committee) and mechanisms for control and oversight. Political control is exercised by the minister of state security.

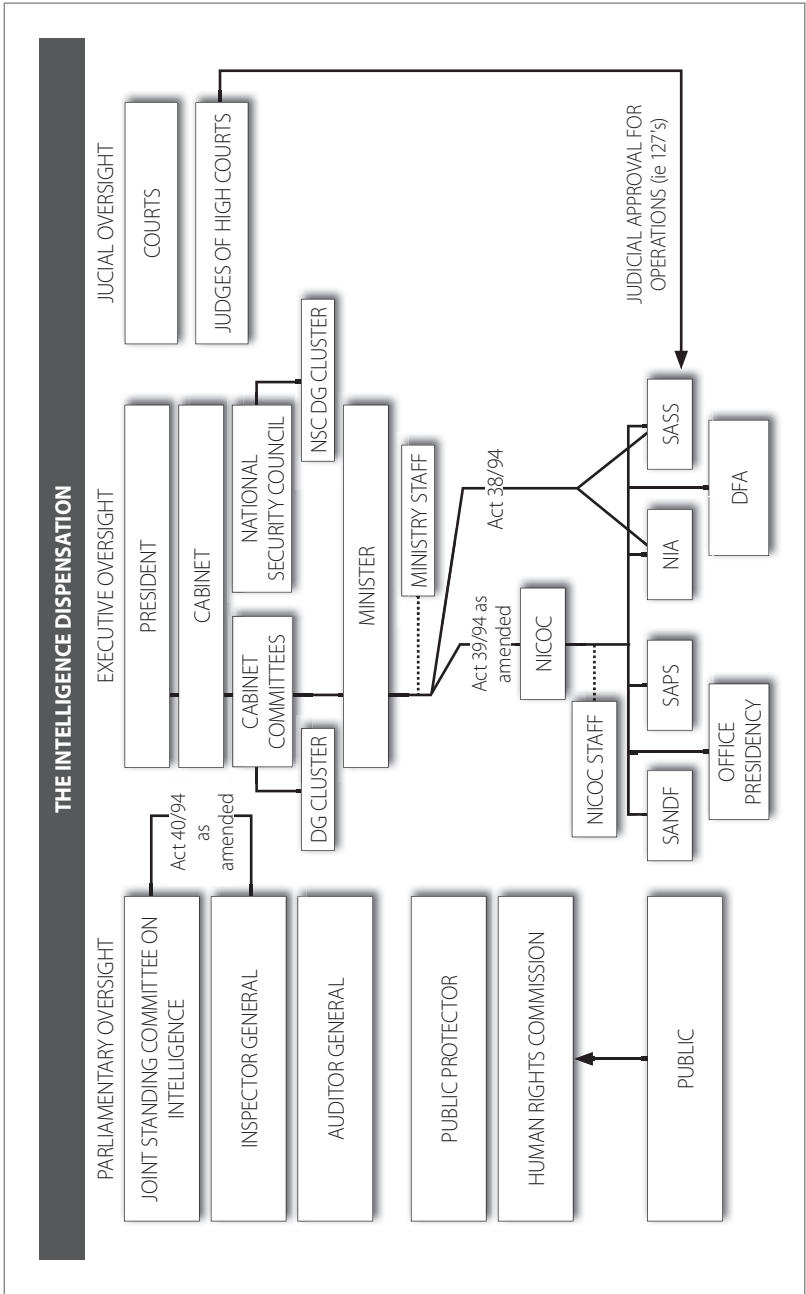
The purposes of intelligence in democratic South Africa are:

- To provide policy makers with timely, critical and sometimes unique information to warn them of potential risks and dangers
- To identify opportunities in the international environment, through assessing real or potential competitors' intentions and capabilities. This competition may involve the political, military, technological, scientific and economic spheres, particularly the field of trade
- To assist good governance, through providing honest, critical intelligence that highlights the weaknesses and errors of government³³¹

Table 3 provides an outline of current intelligence structures.

- The National Strategic Intelligence Act 39 of 1994 set the mandates and functions of the intelligence agencies within legal parameters as follows:³³³
- *National Intelligence Agency (NIA)*: NIA is responsible for internal security and matters relating to domestic intelligence.
- *South African Secret Service (SASS)*: SASS is responsible for external security and matters relating to foreign intelligence.
- *South African Police Service (SAPS)*: The Crime Intelligence Division of the SAPS is tasked with collecting intelligence used in the prevention of crime, conducting criminal investigations and preparing evidence for the purpose of law enforcement and prosecuting offenders.

Table 3 The Intelligence Dispensation



Source National Intelligence Agency³²

- *South African National Defence Force (SANDF)*: The SANDF has a defence intelligence mandate limited to foreign military intelligence regarding the war potential and military establishment of foreign countries – including their capabilities, intentions, strategies and tactics – which can be used by the Republic in planning its military forces in peacetime and for the conduct of military operations in times of war.
- *National Intelligence Coordinating Committee (NICOC)*: NICOC is a central element of the intelligence dispensation in South Africa operating as a conduit between the executive and intelligence agencies. NICOC is chaired by the coordinator for intelligence and is made up of the directors-general of the above four intelligence agencies as well as from Foreign Affairs and the Office of the Presidency.

In South Africa, the intelligence sector has a traditional association with domestic politics and is commonly perceived to be involved in the competition for political power. This notion has bridged the post-apartheid divide and was brought to the fore in the 2005 Avani Project scandal.³³⁴ With intensified competition within the ruling party and the resultant changes in leadership, the intelligence sector and NIA in particular were cast in a bad light. There have been allegations of interference in judicial proceedings, spying on and attempts to intimidate journalists, general incompetence and the use of questionable targeting and tasking methods.

POLICING

South African Police Services (SAPS) is the amalgamation of the former South African Police (SAP) and 10 independent state and homeland police agencies.

SAPS is a large organisation and musters, at 31 March 2009, stood at 183 180,³³⁵ to be increased by about 10 000 in the year ending March 2010. This number has been increasing from 120 000 in 2002 when a moratorium of recruitment was lifted.³³⁶ The net gain between 2003 and 2006 was 24 000 recruits.³³⁷

Members are divided into services, with 54 per cent in visible policing duties, 18 per cent in operational response duties, 5 per cent in detective services, 4 per cent in crime intelligence and 19 per cent in administration.³³⁸ In March 2009, 71 per cent of SAPS personnel were male, of whom 49 per cent were African, 12 per cent white, 8 per cent coloured and 2 per cent Indian. Of the 29 per cent

female, 17 per cent were African, 8 per cent white, 4 per cent coloured and 1 per cent Indian.³³⁹

SAPS personnel are deployed in the nine provinces and have 1 112 police stations. These stations are clustered (on average six to a cluster) around a dominant accounting station that provides administrative and logistical and operational support.³⁴⁰ The cluster system is the result of a controversial restructuring which saw the dissolution of an area-based management system. The disbanding of the areas also resulted in the dissolution of a number of operational units that were based at area level, such as Public Order Policing and Family Violence and Child Protection and Sexual Offences Units and their redeployment at cluster and station level.

SAPS are investigating a shift to occupationally specific dispensations to reward performance without necessarily having to go through rank promotion. This could have significant impact on skills retention and career planning

The extensive recruitment programme has placed training and skill levels within the organisation under considerable pressure. The training curriculum, which provided for six months' college-based training, six months' field training and a year's probation, is being redesigned to provide *inter alia* for a year in college.

SAPS member can form unions. The Police Prisons and Civil Rights Union (POPCRU) and the South African Police Union (SAPU) are recognised, along with the Public Service Association (PSA). Remuneration and conditions of service are negotiated in the Safety and Security Sector Bargaining Council. Industrial action, however, is prohibited.

An important priority in the reform of the SAP and establishment of the SAPS was the need to establish civilian political control over the security forces. Trust needed to be built between the police and the citizens, and the SAPS to be reorganised to reflect and serve the diverse communities of South Africa.³⁴¹

Supported by the imperative to establish civilian political control, the initial reform years were characterised by focused efforts to locate the new police in a human rights framework. The philosophy of community policing was introduced to shift the police from its regime focus to that of the community being served. There was an extensive programme of law reform and impressive civilian oversight mechanisms were established. These included the Independent Complaints Directorate (ICD) and the Civilian Secretariat for

Safety and Security. These institutions, which had specific mandates over the police, were supported by the Human Rights Commission, Public Protector and Auditor-General, an independent judiciary and an active civil society and media.³⁴² Concerted efforts were made to address gender and race imbalances in the SAPS.³⁴³ The National Crime Prevention Strategy has identified and introduced approaches that address the root causes of crime and violence in South Africa.³⁴⁴

By the late 1990s the initial shifts to a more repressive policing and criminal justice policy were evident in response to ever-increasing political pressure to reduce crime. The SAPS' own National Crime Combating Strategy for stabilising crime levels through military-style policing operations replaced the developmental philosophies of the National Crime Prevention Strategy. This was soon followed by the introduction of minimum sentencing legislation and more restrictive bail laws.³⁴⁵ The civilian oversight mechanisms were scaled back: the Secretariat for Safety and Security was virtually absorbed into the police; and the national commissioner was made accounting officer.³⁴⁶

For all the enthusiasm that greeted the establishment of the ICD, it never managed to achieve more than 50 per cent of its staff complement³⁴⁷ and for five years was without an executive director. The SAPS' own internal oversight capacities were reduced, and most notably the Anti-Corruption Unit was disbanded.³⁴⁸ Plans such as the Anti-Corruption and Fraud Prevention Strategy have hardly been implemented.³⁴⁹ The National Inspectorate, responsible for regular inspection of SAPS services has also collapsed.³⁵⁰

The contestation that surrounded the reintroduction of military ranks³⁵¹ and changes to the legislation on the use of force have been offset by the drive to re-empower the Secretariat for Police³⁵² and provide the secretariat and the ICD with their own legislation reasserting their independence of the SAPS.³⁵³

Internal oversight is the foundation of oversight of policing. The weaknesses in the system are evident. Lack of compliance with ICD recommendations, which has been highlighted by parliament and the ICD, points to deeper systemic issues in the SAPS internal discipline system. Linked with this, insufficient attention has been given to the role of the unions in the promotion of discipline in the SAPS.

The South African Police Service Act, 1995, and Local Government Systems Act, 2000, provide for the establishment of municipal police services. Six municipal police services have been established in the major metropolitan areas.

The municipal police have a mandate in by-law enforcement, crime prevention and traffic policing. They also act in a support capacity to SAPS.

Oversight of the Municipal Police Services is provided through the public safety committee comprising councillors and civilians. In a study in 2005 the CSVR found the functioning of these structures was weak and lacked strategic and coherent monitoring and evaluation systems.³⁵⁴ This was confirmed four years later by the ISS while researching integrity management:

A lack of creativity and political will is placing the country's Metropolitan Police Departments (MPDs) at risk of losing legitimacy, as management and councils pay lip service to evidence of dwindling organisational integrity.³⁵⁵

The amalgamation of the municipal police into SAPS is currently being debated.

In 2009 the amendment to the SAPS Act included:

- To prevent municipalities, other than metropolitan councils, from establishing a municipal police service (MPS)
- To institutionalise the National Forum of Municipal Police Services as a coordinating and joint problem solving forum
- To strengthen the role of the national commissioner
- To limit the right to strike of members of an MPS
- To implement a uniform disciplinary system between the SAPS and MPSs

SAPS provides for a number of opportunities for structured interaction with citizens. These are framed against the philosophy of community policing which was adopted as a key doctrine in the SAPS at the time of the transformation from the SAP to the SAPS. As such, they have an important role to play in the governance of the organisation providing for the voice of local communities. Key among these are community police forums (CPFs) and sector forums. The notion of a sector-wide interaction between communities and the criminal justice systems and social departments in the form of community safety forums has now become popular.

The establishment of community police forums is provided for in the South African Police Services Act, 1995. The objectives of CPFs are:

- To establish and maintain a partnership between the community and the service
- To promote communication between the service and the community
- To promote cooperation between the service and the community in fulfilling the needs of the community regarding policing
- To improve the rendering of police services to the community at national, provincial, area and local levels
- To improve transparency in the service and accountability of the service to the community
- To promote joint problem identification and problem solving by the service and the community³⁵⁶

Most police stations have a CPF, but their levels of functioning vary greatly.³⁵⁷ The ISS Victim Survey, 2003, found that less than half of South Africans (45%) knew what a CPF was.³⁵⁸ Many CPFs have limited public reach, cannot necessarily be considered representative of the communities in which they function, and are generally poorly placed to engage meaningfully in local safety, security and policing issues.³⁵⁹

Furthermore, the oversight role of the CPF has remained underdeveloped in favour of a more partnership model with SAPS.³⁶⁰ The CPF mandate includes both oversight of and police partnerships with local communities. The latter role has evolved more rapidly, being in the interests of the police and often of the communities.³⁶¹

The future of community policing is subject to much debate, particularly as new forms of community state interface such as community safety forums (discussed below) are being experimented with and the oversight agencies such as the Secretariat of Police are being reorganised to bring them closer into line with their oversight mandate.

In December 2003 the SAPS national commissioner issued the Draft National Instruction on Sector Policing. The policy on sector policing was issued in 2009.

The objectives of sector policing are:

- Increasing visibility
- Improving the quality of service
- Using resources effectively and efficiently

- Working closely with local communities
- Applying problem-solving techniques³⁶²

In the sector-policing approach the station precinct area is divided into smaller units with dedicated resources and personnel. The sector commander establishes interaction with the communities in the sectors through sector forums. A sector profile is developed which identifies crime problems and needs and an appropriate policing strategy for the area is developed.

As with the CPF, the success of the strategy varies greatly from area to area, depending on management and logistical inputs and the complexity of the area policed.

Community safety forums are multi-disciplinary local-level forums. The role of the safety forum is to promote cooperation across the criminal justice sector and local level, as well as developing longer term safety plans and strategies that involve role players outside the criminal justice system.³⁶³

The community safety forum was identified as a priority project in 2010 in the president's state of the nation address, having been consistently on the ANC agenda since 2002.

Several pilot community safety forums operate across the country, driven by provincial departments of community safety. At national level there has been a watching brief by the Criminal Justice Clusters Development Committee and the National Secretariat of Police.

Populist demands for stronger law enforcement at the expense of longer-term crime prevention strategies and respect for the rule of law and human rights remain constant themes. The strategies of community policing introduced at the time of South Africa's transformation to democracy in 1994 have become largely discredited. The threat of a return to a militarised police and a repressive criminal justice system is real.

Meanwhile the developmental programmes and the accountability project have not been abandoned. The efforts to build the notion of community safety forums as a multi-disciplinary effort to promote local safety initiatives have been highlighted by the administration as a priority for 2010. Likewise, there has been significant political investment in reorganising the Secretariat of Police to bring it back to its original mandate as the driver for policing policy and a key oversight agency for police service delivery. The ICD is being supported to consolidate the independence of the directorate and build its capacity in new areas.

There is opportunity to support a significant policy and legislative agenda for the short to medium term. This includes the legislation for the Secretariat and the ICD,³⁶⁴ legislation for the regulation of the private security industry, and legislation to completely overhaul the Police Act. These developments provide significant opportunity to deepen and entrench democratic good governance practices within the policing sector.

CORRECTIONAL SERVICES

The Department of Correctional Services (DCS) is responsible for prisons and is a national competency with a ministerial portfolio in cabinet. The DCS is part of the justice, crime prevention, and security cluster. The DCS has a staff establishment of 46 306 posts, of which 41 342 are filled. Men constitute 73 per cent and women 27 per cent of these posts. Of the senior and top management echelon, 28 per cent are women.³⁶⁵ There are 237 functioning prisons, of which two are privately operated.

The prison population as at October 2009 was 164 667 prisoners (50 675 unsentenced and 11 3992 sentenced); 3 562 women; 1 341 children.³⁶⁶ Conditions in women's prisons are generally better than in men's prisons.

The DCS has a budget of R15.1 billion (2010/11) to provide services to an average prison population of 165 000 and employ a staff corps of 42 000. Comparatively, the DCS budget is more than double the budget for the Department of Basic Education for 2010/11 and there is thus little reason to believe that the DCS budget is inadequate.³⁶⁷ Plans are afoot to employ more staff and build new prisons (12 000 beds).

Two issues emerge from the budget. First, there is significant wasteful and fruitless expenditure; the auditor-general noted expenditure to the amount of R344 million in this regard for 2008/9.³⁶⁸ Questions can also be asked about the massive investment in security infrastructure over the past five years and whether these funds could not have been used more effectively in staff training and general infrastructure upgrading. Second, the White Paper on Corrections in South Africa is the key policy and strategy document of the DCS, but the budget remains seriously misaligned with this strategy. While the White Paper emphasises rehabilitation and social reintegration, less than 3 per cent (and declining) is allocated to the social reintegration budget programme and the bulk of expenses are allocated to security.

The rapid transition of staff post 1994 has resulted in serious skills losses. The period between 1994 and 2000 (and perhaps later) saw discipline in the department disintegrating, which was aggravated by leadership instability (a high turnover of commissioners and acting commissioners) and the demilitarisation of the department on 1 April 1996, without a new management framework being put in place. The quality of leadership has also been wanting in many aspects. At operational level, practical problems persist, which have not been helped by the increased centralisation of decision making, often leaving heads of prisons as figureheads, with little control over who is appointed, what training is received, and so forth. In many regards, DCS is operating in crisis-management mode, driven by what appears in the media, while ignoring other crises (eg severe overcrowding at some prisons).

The DCS is involved in a range of programmes aimed at improving information systems and thus internal controls. Particular attention is being paid to measuring performance in respect of clear outputs as well as legislative compliance. Strengthening oversight remains a key intervention area to ensure that the DCS is held accountable.

There is a code of conduct for staff members and a revised disciplinary code, but statistics from disciplinary actions indicate sporadic, as opposed to sustained, enforcement of discipline.³⁶⁹

The ambitious vision of the DCS, as per the White Paper, has delivered limited results, and serious questions must be asked about general staff culture. While there are exceptions of good practice, the overall impression is that prisoners have few opportunities to improve their lives and the rights of prisoners are frequently disregarded. Assaults, even fatal, are common, and the inability of the DCS to ensure safe custody has been admitted by the minister.³⁷⁰

The extent to which female prisoners receive the specialised services they require is doubted, and services are characterised by a traditional, if not paternalistic attitude towards female prisoners.

Sexual violence between men is believed to be common in the prison system, although accurate statistics are not available. Until 2008, the DCS entirely ignored the reality that sexual violence takes place in prisons. The prevalence of sexual violence should be understood within the context of gang history (more than a century old) and the construction of male identities in the gangs. Sexual violence is severely underreported. The DCS has done little, if anything, to prevent sexual violence and a strategy remains wanting. It is uncertain whether

the DCS has properly assessed the impact of the Sexual Offences Act on its mandate. However, an appropriate response needs to emphasise prevention and early intervention, as opposed to a reactive approach.

The number of children in prisons has dropped from more than 4 000 to 1 500 in recent years and this alone will have improved their situation. At designated youth prisons, where sentenced children are also kept, services are generally of a better quality. There is reason for concern, however, about unsentenced children.

HIV-positive prisoners are an additional minority group. The DCS handled this category of prisoner in a disastrous manner until it was taken to court and ordered to provide access to ARVs.³⁷¹ Subsequently the DCS established 13 accredited ARV centres, and although a link has not been proven, there has been a reduction in the number of deaths due to natural causes.³⁷²

Deaths in custody due to natural and unnatural causes remain a persistent problem. For unnatural causes (murders, suicides and accidents) the overall impression is that the DCS cannot ensure safe custody, and murders result from prisoner-on-prisoner violence as well as warder-on-prisoner attacks. Mass assaults have been frequently reported. The department reported that in 2008/9 there had been an estimated 1 400 assaults and 64 unnatural deaths.³⁷³ The Judicial Inspectorate recorded 2 884 complaints regarding prisoner-on-prisoner assaults, 2 010 complaints alleging official-on-prisoner assaults, and a further 4 223 complaints alleging 'inhumane treatment'. The overall impression gleaned from these statistics is that the state cannot guarantee the safety of prisoners and that often officials are guilty of assaulting prisoners, not infrequently with fatal consequences. First-time younger prisoners are more at risk of prisoner-on-prisoner assaults.

Poor healthcare services are cause for concern because 37 per cent of prisoners who die in prison because of natural causes die within the first year of custody.³⁷⁴ Prison overcrowding has been a persistent problem and awaiting-trial prisoners in particular suffer, with some prisons being near to 300 per cent full. Charges against many awaiting-trial prisoners will be dropped or their cases struck from the role.³⁷⁵ Their custody was thus meaningless and without purpose.

There appears to be too much political meddling in the management of the DCS and a number of poor decisions were the result of such meddling. There is a growing schism between senior management and political leadership on one

hand and operational management on the other. The net result is that operational decisions are less and less determined by the legislated and policy mandates. Parliament (through the Portfolio Committee on Correctional Services), however, has demonstrated increased eagerness to fulfil its oversight mandate.³⁷⁶ This has led to open confrontations between the previous chairperson and the former minister. The new Portfolio Committee chairperson has already made his plans clear and intends to exercise robust oversight.³⁷⁷

Despite attempts by cabinet to foster closer cooperation between government departments in the criminal justice system, progress has been limited. Objectives and targets are often diametrically opposed, as illustrated by the police's arrest targets versus prison overcrowding. Poor cooperation and coordination frequently result in suspects remaining in custody for lengthy periods without any progress in their cases.³⁷⁸

Organised labour remains a powerful actor in the prison system and was particularly destabilising from 1994 to 2000. The widespread corruption, violence and intimidation led by POPCRU ultimately resulted in the Jali Commission.³⁷⁹ There is good reason to believe that POPCRU wields significant influence in the prison system.

Public confidence in the DCS is low. Leadership instability, repeated exposés of corruption, overcrowding, deaths in custody, six successive qualified audits, and perceived political interference have left the public with the impression that it is an inherently corrupt department.

PRIVATE SECURITY

The private security industry in South Africa began developing in the 1980s because of a number of factors – the rise of insecurities associated with apartheid activities; the apartheid state's willingness to accept the security industry as an adjunct to the state police; and the apartheid state's attempts to professionalise the industry through the enactment of various pieces of legislation. Post 1994 has seen an especially significant rise in the size of the industry due to the entry of international conglomerates, the steady entry of ex-security personnel into the industry, and the rise of the crime rate and insecurities associated with post-transitional developments.³⁸⁰

The private security industry employed 288 686 active registered security guards across 4 639 companies in 2005. Significantly, a further 638 181 persons

were registered as security guards, but not active.³⁸¹ In 2008, the industry had an annual turnover in excess of R50 billion.³⁸²

The Secretariat of Police has indicated that the Private Security Industry Regulation Act will be reviewed and oversight of labour and company regulation might revert to the Department of Labour, while oversight of conduct may reside in the Secretariat of Police.³⁸³

Less affluent communities are characterised by neighbourhood watches and anti-crime associations. One of the largest is Mapogo-a-Mathamaga, which claimed 50 000 members and 90 branches throughout Gauteng in 2000.³⁸⁴ Public/private partnerships (PPPs) have become popular in the form of city or municipal improvement districts where rate levies pay for private security companies that work in partnership with state police and local authorities.³⁸⁵

For correctional services, private companies have become involved in providing security inside prisons through integrated biometric security systems and CCTV. Two private companies (Kensani Corrections Management and G4S Care and Justice Services, owned by G4S) operate two 3 000-bed maximum security prisons. These were established as PPPs. Despite being operated at high standards, there has been much criticism about the manner in which the contracts were granted and the cost to the taxpayer, especially since profits are guaranteed at between 23 per cent and 29 per cent (linked to the CPI) for the 25-year term.

While the original intention was that the two private prisons would serve as 'best practice laboratories' for the DCS, the transference of skills and knowledge has not taken place and the two private prisons continue to operate as islands in the DCS. The increased involvement of private sector companies (through PPPs) was initially a management strategy to address key risk areas (eg stock control, security, and appointments), but the overall results from this approach seem to have been counter-productive in two ways, first, through allegedly corrupt awarding of contracts; and second, by duplicating functions in the DCS for which staff were already employed (eg stock control, kitchens and human resource management).

The increased involvement of private sector companies since 1994 has not had a positive effect on public confidence in the prison system because the awarding of the contracts has been consistently linked to corruption and maladministration. This probably had the additional impact that rank-and-file staff lost confidence in the integrity of senior management. Although private

sector companies have secured lucrative contracts from the DCS, NGOs rendering services to prisoners and ex-prisoners do not receive financial support from it.

INDEPENDENT OVERSIGHT AND ACCOUNTABILITY

South Africa has a plethora of oversight and accountability mechanisms that entrench civilian control of the security sector. Defence, Police Correctional Services and the judiciary are under the control of their ministries. There are robust parliamentary portfolio and joint standing committees, including the Standing Committee on Public Accounts, auditor-general, ombudsman, Independent Complaint Directorate, civilian secretariats, Human Rights Commission, Public Protector, courts, civilian parole boards and a vibrant civil society and media.

Defence

The Republic of South Africa has a bicameral parliamentary system consisting of the National Council of Provinces and the National Assembly.³⁸⁶ Parliament has a range of powers over military affairs. For example, it has legislative powers; approves the defence budget; and reviews the president's decisions to deploy the SANDF in critical defence functions.³⁸⁷ The 1996 constitution establishes the basis for multiparty parliamentary committees.

The rules and orders of parliament stipulate the powers of the parliamentary committees:

- To deal with bills and matters falling within their portfolio
- To maintain oversight within their portfolio of the exercise of national executive authority, including the implementation of legislation, any executive organ of state, constitutional institution and other body or institution
- To monitor, investigate, enquire into and make recommendations concerning any such organ of state or constitutional body
- To consult and liaise with any executive organ of state or constitutional institution
- To perform any other function, task, or duty assigned to it in terms of the constitution, legislation, rules or resolutions of the National Assembly

- To summon any individual or legal person to give evidence on oath or affirmation or to produce documentation; receive petitions, representations or submissions from interested bodies and persons; conduct public hearings; hear oral evidence on petitions; determine its own procedures; and hold meetings³⁸⁸

The Joint Standing Committee on Defence (JSCD) and the Portfolio Committee on Defence (PCD) are charged with oversight of defence matters. The JSCD can investigate and make recommendations regarding budget, functioning organisations, armament policy and the state of preparedness of the SANDF. It includes members of the National Council of Provinces and the National Assembly. The PCD discharges similar functions; thus the work of the JSCD and that of the PCD are thus complementary.³⁸⁹

Problems identifiable with parliamentary oversight are ‘the limits of transparency’ (for example cannot jeopardise the success of military operations), but the Access to Information Act is a tool for resolving disputes about information and the capacity of parliamentarians to exercise effective oversight, especially when it comes to budgetary issues.³⁹⁰

Military leadership remains a challenge in the armed forces. The protest march by soldiers to the seat of government in August 2009 was the result of dysfunctional internal grievance channels, lack of accountability and poor leadership. Although the minister responded by appointing a commission to investigate the grievances of soldiers, this is only a short-term arrangement. What is needed is a military ombudsperson to deal with issues on a more permanent basis that could hold generals accountable for soldiers’ affairs.

Intelligence

The establishment of a multi-party parliamentary committee to execute legislative oversight of the intelligence domain is a definitive feature of the post-apartheid South African intelligence dispensation. The JSCI, established by the Intelligence Services Oversight Act 40 of 1994, is empowered by the act to fulfil, *inter alia*, these functions:

- To obtain an audit report on the financial statements of the intelligence services from the auditor-general

- To obtain a report from the Evaluations Committee on secret projects reviewed and evaluated by that committee
- To obtain a report regarding the functions performed by the judge designated to authorise intrusive methods of investigation
- To consider, initiate and make recommendations on all legislation pertaining to the intelligence services
- To review and make recommendations regarding interdepartmental cooperation and the rationalisation and demarcation of functions relating to intelligence and counterintelligence
- To order investigations into complaints from the public
- To hold hearings and subpoena witnesses on matters relating to intelligence and national security, including administration and financial expenditure

Established in terms of the Intelligence Services Oversight Act 40 of 1994, the inspector-general is appointed by the president after nomination by the Joint Standing Committee on Intelligence (JSCI) and approved by parliament. The inspector-general is accountable to the JSCI and in relation to the civilian intelligence agencies, has these functions:

- To monitor compliance of NIA and SASS with the constitution, applicable laws and policies on intelligence and counter-intelligence
- To review intelligence and counterintelligence activities
- To perform all functions designated by the president or minister for intelligence services
- To receive and investigate complaints from the public or members of the intelligence services on alleged maladministration; abuse of power; transgressions of the Constitution, laws or policies; corruption or fraud

Traditionally the level of participation in intelligence governance in South Africa has not been high. The White Paper on Intelligence, for example, was prepared by a single drafter and was published without public or parliamentary engagement.³⁹¹ Intelligence has generally been viewed as a topic outside the purview of public debate. It was only with the scandals of 2005 (Project Avani, in which the misuse of position and power and allegations of the subversion of the national intelligence apparatus to personal and group political interest surfaced) that public discourse on intelligence was provoked.

A brief analysis of the outcomes of the Project Avani scandal reveals these gaps in the oversight and governance of the intelligence sector:

- Lack of sufficient preventative and proactive controls on politically sensitive operations
- Lack of sufficient control on the use of intrusive methods of investigation
- Insufficient control of operational protocols
- Continued politicisation of domestic intelligence operations and the potential for misuse of authority in conducting political intelligence operations
- Flaws in the practice of having a senior intelligence official serving in two posts

This episode of misconduct spurred the minister for intelligence services to appoint the Ministerial Review Commission on Intelligence as an instrument to review the mechanisms for control of the civilian intelligence agencies. The findings of the Review Commission were released to the public as the minister departed office prematurely in September 2008. The commission found inter alia that:

- A new White Paper on Intelligence is needed and should be produced through consultative process
- The National Strategic Intelligence Act should be amended to bolster critical issues of tasking and the role of the minister in receiving intelligence
- Ministerial approval should be required for intrusive operations
- Ministerial regulations and directives should be issued on the conduct of intelligence and counter intelligence and ministerial regulations should be published in the Government Gazette
- The mandate of the inspector-general should be reviewed and for efficacy limited to an ombuds role
- The Office of the Inspector-General needs to be adequately staffed and resourced to fulfil its functions
- The mandate of NIA should be reviewed and more clearly spelled out in legislation
- Intrusive methods should be used with the approval of the minister and judicial authorisation and only for limited purposes

- Policies, practices and controls for the interception of communication need to be tighten
- Reports of the auditor-general should be made public³⁹²

Policing

The Parliamentary Portfolio Committee on police plays an active role in monitoring police performance and reviews the annual budget and annual report in addition to its legislative function. The mission of the committee is:

- To pass legislation
- To scrutinise and oversee executive action and organs of state such as the Department of Police, Secretariat for Safety and Security, Independent Complaints Directorate, Private Security Industry Regulatory Authority
- To facilitate public participation and involvement in legislative and other processes
- To engage, participate and oversee international treaties and protocols

The committee's monitoring capacity is assisted by a station monitoring tool to be utilised on field oversight and during constituency periods.

The ICD is being overhauled in a process that will see it enshrined in own legislation separate from the SAPS Act. This legislation will seek to ensure that:

- The directorate functions independently of the SAPS
- Each organ of state assists the directorate to maintain its independence and impartiality, and to perform its functions effectively

A number of other bodies play an oversight role over the SAPS. These include the South African Human Rights Commission, the Auditor-General's Office, and the Office of the Public Protector. The auditor-general has increasingly been undertaking performance audits on state departments and SAPS has been subject to performance audit on policing border line duties, sector policing, the operation of service centres and the 10111 call centre.

In 2010 the auditor-general plans a further performance audit of SAPS. This will not be made public, but recommendations will be made to SAPS in a management letter. The planned performance audit will test:

- Internal policies, procedures and controls related to the management of performance information
- Systems that collect, monitor and report performance information
- Existing performance information
- Consistency of performance information between strategic/annual performance plan, quarterly reports and annual performance report

Prisons

There is little wrong with the overall oversight and accountability architecture of this sector. How the oversight mandates are interpreted, however, is dependent on the mandate holders. The performance of the Parliamentary Committee on Correctional Services (PCCS) before and after 2004 is a good example of this, with the post-2004 committee taking a far more active role in exercising oversight. The auditor-general and the Standing Committee on Public Accounts (SCOPA) have consistently been rigorous in holding the DCS to account. The oversight architecture was significantly strengthened after a 2008 amendment to the CSA required the Judicial Inspectorate for Correctional Services (JICS) to submit its inspection reports to parliament and the minister of correctional services.

The ability of the legislature to exercise oversight is dependent on the quality of information to which it has access and the ability to utilise this information effectively. Prior to 2004 there were serious shortcomings and the PCCS failed in exercising its oversight mandate. Since 2004 there has been marked improvement. Increasingly the PCCS has taken on the DCS in budgeting, expenditure, tenders, human resource management, law reform and a range of other issues. At this stage there is reason to be optimistic about the role of the PCCS. It can equally be expected that the relationship between the JICS and the PCCS will improve the situation.

The process of law reform and major policy development (eg White and Green Papers) requires that public hearings be held by parliament and that the PCCS also holds public hearings on the budget vote and annual reports of the DCS, as is required. However, the DCS has been reluctant or unable to establish meaningful dialogue consistently with stakeholders on policy and law reform. There was no public consultation on the 2005 White Paper or on 60 or more new policies emanating from the White Paper. Transparency is consequently

attained once draft legislation and major policies are placed before parliament and not earlier.

The 1998 Correctional Services Act (CSA) established the Judicial Inspectorate for Prisons (later renamed Judicial Inspectorate for Correctional Services, JICS) which is headed by the inspecting judge; a judge of the High Court. The JICS, although funded from the DCS budget, is an independent body with the broad mandate to investigate any matter concerning the treatment of prisoners. It may also report on corruption and dishonest practices. The inspecting judge is assisted by independent visitors who are members of the public who visit prisons regularly to record complaints from prisoners at the 237 prisons. They have unrestricted access to all people, places and documents at prisons. It is mandatory for the DCS to report certain issues to the inspecting judge, namely deaths, use of force, solitary confinement, and use of mechanical restraints (the latter two require approval from the inspecting judge).

After the full promulgation of the 1998 CSA in 2004, civilian parole boards were established in the 52 management areas of the DCS. They are civilian parole boards, which implies a level of oversight and monitoring, but the parole system has been marred by a series of poor decisions, primarily the result of incorrect interpretation of a confusing legal framework. This has resulted in a sharp increase in litigation by prisoners against the DCS regarding their release and claims for human rights violations. In 2008/9 DCS incurred liabilities in excess of R988 million as a result of 'bodily injury/assault'.³⁹³

The oversight architecture is satisfactory, but that there are serious problems in implementation. These problems appear to be related more to the internal controls of the DCS than to the controls exercised by external mandate holders.

ROLE OF CIVIL SOCIETY

South Africa benefits from a multiplicity of civil society organisations, ranging from social movements to research and expert organisations, which operate not only in South Africa, but in the rest of Africa. A number of regional and continental organisations are found in South Africa, for example ACCORD, Centre for Conflict Resolution, Pax Africa, EISA, Idasa, Institute for Global Dialogue, Institute for Security Studies and many others in various disciplines.

From the pool of these civil society organisations there has been a great deal of engagement with security sector governance (SSG) by civil society in South

Africa. These organisations have been engaged in developing national defence policy, monitoring patterns of expenditure on defence, peacekeeping and security training, human rights issues in prisons, and so forth.

NGOs have primarily delivered developmental services in support of prisoners and released prisoners. A small group of human rights organisations are involved directly or indirectly in litigation by prisoners against the DCS, with the result that there are legal liabilities of nearly R1 billion against the DCS. A growing group of NGOs and academics, together with the JICS and the South African Human Rights Commission (SAHRC), are focusing on South Africa's obligations under the UN Convention against Torture (UNCAT), focusing on legislative reform to ensure that obligations set out in Articles 2 and 4 of the convention are met.

Through the annual public hearings on the budget vote and annual reports, civil society has the opportunity to engage with parliamentary portfolio committees. A robust media is active in reporting on security-related matters.

On the whole, however, civil society in South Africa needs to be more organised and coordinated at national and provincial level in order to ensure that the security sector remains transparent, responsible and accountable. It is important for civil society to establish sustainable partnerships with parliament in ensuring civil oversight of the security sector. It is also important to empower ordinary citizens to demand professionalism and responsibility from the security forces. The Access to Information Law is an opportunity that civil society in South Africa should use in promoting transparency in the security sector.

KEY CHALLENGES AND RECOMMENDATIONS

South Africa, post 1994, undertook extensive reforms to its state security architecture. Its vision was to create a democratically accountable, legitimate and human rights-centred security sector. Through a process of wide consultation it formulated White Papers of the security sector institutions that informed the policy and legal frameworks that now govern the security sector. Given changed global, regional and national contexts, however, it is advisable to review and update the White Papers. A defence review update is currently under way. This process should be as inclusive as the previous one to ensure maximum input and buy-in. South Africa has yet to develop a national security policy. It has an extensive oversight machinery with robust parliamentary committees, an

auditor general and an office of the ombudsman. The media and civil society are vigilant in exercising their monitoring role. However, there remain serious human resource constraints in the defence force, police, justice and correctional service sectors, which indicate the need to review recruitment and retention strategies, training and remuneration. Although the issue of war veterans is receiving attention, as their incorporation under the Department of Defence indicates, closer scrutiny of and remedial efforts for their plight must be considered. All departments are regularly receiving qualified audits, which speaks to the need for improved management. The intelligence sector has recently been under the spotlight. There are insufficient preventative and proactive controls on politically sensitive operations and on intrusive methods of investigation.

Continued politicisation of domestic intelligence operations and the potential for misuse of authority in conducting political intelligence operations are areas of concern. We therefore recommend the following:

- A national security police should be developed
- The White Papers on defence and intelligence must be revised
- Consideration of an ombudsperson for the military will be prudent
- Closer cooperation between departments in the criminal justice system is required as objectives and targets are not aligned
- Tender rigging for private security companies must be addressed
- The Office of the Inspector-General needs to be adequately staffed and resourced to fulfil its functions
- Corruption and allegations of human rights abuses in the DCS need to be addressed
- Demands for stronger law enforcement must be balanced with longer-term crime prevention strategies and respect for the rule of law
- The effectiveness of community police forums varies considerably across the country and should be standardised
- Address health issues and overcrowding in the prisons
- The massive growth of the private security sector is a matter of concern

8 Zimbabwe

POLITICAL OVERVIEW

Nominally, Zimbabwe is a constitutional democracy. In practice, however, under the leadership of the Zimbabwe African National Union Patriotic Front (ZANU-PF), the country has become an autocracy. Zimbabwe attained political independence from Britain on 18 April 1980, after a protracted liberation struggle against minority rule that claimed thousands of lives. Its current constitution was part of the ceasefire agreement negotiated at Lancaster House in London and chaired by the United Kingdom's secretary of state for foreign and commonwealth affairs, Lord Carrington. Parties to the negotiations were the Anglo-Rhodesian Alliance, led by Ian Smith, Bishop Abel Muzorewa and Reverend Ndabaningi Sithole, and the Black Nationalist movement (Patriotic Front) jointly led by Robert Mugabe and Joshua Nkomo.

Since 2000, Zimbabwe has dominated the news in Africa and beyond, for all the wrong reasons. The precipitous collapse of the economy, ultra-high inflation, and a worthless currency; images of state-sanctioned brutality against media workers, civil society and opposition activists; violence, displacement, death and destruction in towns and on commercial farms; women with children on

their backs fleeing to neighbouring countries; and imprisoned persons on the verge of starvation and death have made regional and global news. The images and the discourse of violence ‘indicating ... the repressive nature of the Mugabe regime as well as a sense of impunity demonstrated by the state’³⁹⁴ are in stark contrast to the jubilation and the messages of reconciliation of April 1980 when Robert Gabriel Mugabe took office as the leader of the newly independent state of Zimbabwe, freed from many decades of brutal, white supremacist minority rule. So promising was Mugabe as a unifier and national leader that in 1994 – despite the widely publicised Matabeleland massacres – the country that today is his arch-enemy, the United Kingdom, appointed him an honorary Knight Grand Cross in the Order of Bath on a state visit, only to strip him of the honorary knighthood in June 2008.³⁹⁵

For the first decade after independence in 1980 the ruling party, ZANU-PF, sought to legislate for a one-party state. Although the plan to have a *de jure* one-party state had to be abandoned in the light of the international political situation and local resistance from within and outside the governing party, ZANU-PF continued to make concerted efforts to have a *de facto* one-party state by suppressing all opposition to its rule. In many respects,

there was a strong continuation with the Rhodesian state, perpetuated through the application of repressive laws, such as the Emergency Powers Act (Chapter 11:04) and the 1960 Law and Order (Maintenance) Act, which were all used to detain political rivals and silence critics.³⁹⁶

Intolerance of opposition and criticism characterised the approach of the ruling party right up to the time it was pressured into entering into a forced marriage of convenience with the Movement for Democratic Change (MDC) in 2009 in the name of the Inclusive Government.

On paper, the country is currently governed jointly by ZANU-PF and the two factions of the MDC. In reality, however, all executive power, including governance, control and management of the security sector, rests with ZANU-PF. This is despite the existence of the National Security Council (NSC), of which representatives of the government partners are members, and joint ministerial authority of ZANU-PF and the MDC over the police. Whereas the political terrain has changed a lot since the coming into being of the MDC in 1999 and government ministries are shared among the three parties to the GPA and even

more so after the March 2008 elections, ZANU-PF has maintained hegemony of the security sector. For all practical purposes, the subordination of the security sector, which is posited as a tenet of prudent civil-military relations and provided for under the constitution and laws of Zimbabwe and that country's national defence policy, has happened only towards one part of the Inclusive Government – ZANU-PF.

On the economic front, in the last 10 years Zimbabwe has become a pariah state, virtually excluded from significant international engagements except in SADC, the AU and the UN. For a variety of largely self-inflicted reasons, the country has lost its credit worthiness with international financiers, virtually shutting down access to lines of credit and balance of payments support. According to the International Monetary Fund (IMF),

Zimbabwe first incurred arrears to the IMF in mid-February 2001, and at the end of August 2001 its overdue obligations totalled special drawing rights (SDR) 41.3 million³⁹⁷ (about US\$53 million), including SDR18.9 million (about US\$24 million) to the IMF's General Department, and SDR22.3 million (about US\$29 million) to the Poverty Reduction and Growth Facility (PRGF) Trust.³⁹⁸

This led to the country's ineligibility to access the general resources of the IMF, and removal from the list of countries entitled to borrow resources under the Poverty Reduction and Growth Facility (PRGF). In 2002 – when Mugabe was re-elected in an election that was adjudged not free and fair by the Commonwealth and the EU, among others – the IMF adopted a 'declaration of non-cooperation regarding Zimbabwe's overdue financial obligations to the IMF', and suspended the provision of technical assistance to Zimbabwe.³⁹⁹ The following year – 2003 – as Zimbabwe remained in arrears and the economy was in free fall, the IMF suspended Zimbabwe's voting rights, thus marking the commencement of compulsory withdrawal procedures.⁴⁰⁰ Citing 'economic mismanagement, undemocratic practices, and the costly deployment of troops to the Democratic Republic of the Congo'⁴⁰¹ in 2001, the US enacted the Zimbabwe Democracy and Economic Recovery Act (ZIDERA), which directs the secretary of the treasury to:

instruct the United States executive director to each international financial institution⁴⁰² to oppose and vote against (1) [a]ny extension by the

respective institution of any loan, credit, or guarantee to the Government of Zimbabwe; or (2) [a]ny cancellation or reduction of indebtedness owed by the Government of Zimbabwe to the United States or any international financial institution.⁴⁰³

ZIDERA has also resulted in an asset freeze and travel ban for persons identified as ‘responsible for the deliberate breakdown of the rule of law, politically motivated violence, and intimidation in Zimbabwe’.⁴⁰⁴ US Congress made the repeal of ZIDERA conditional on restoration of the rule of law, free and fair elections and related conditions, commitment to equitable, legal and transparent land reform, fulfilment of the agreement ending the war in DRC and, perhaps most importantly for this paper, ‘military and national police subordinate to civilian government’.⁴⁰⁵ There is as yet no evidence to suggest that US executive directors on any of these international finance institutions have exercised the powers envisaged in ZIDERA.

The EU has maintained a personal asset freeze; travel ban on selected politicians, senior government and selected security personnel; and an embargo on the sale of arms to Zimbabwe. Other countries, notably Australia and Switzerland, have instituted their own targeted measures, not unlike those of the EU. Even with the coming into being of the Inclusive Government, on 16 February 2010, the EU decided that:

in view of the situation in Zimbabwe, in particular the lack of progress in the implementation of the Global Political Agreement signed in September 2008, the restrictive measures ... should be extended for a further period of 12 months.⁴⁰⁶

A few weeks later, on 1 March 2010, the US president announced that since ‘Zimbabwe’s deep political crisis remained unresolved’,⁴⁰⁷ he was extending sanctions against the government of Zimbabwe. The sanctions/targeted measures continue to be one of the major sticking points hindering the full implementation of the Global Political Agreement underpinning the inclusive government.

Fundamental to the survival of the Mugabe regime has been a partisan and politically active security sector that has been accused of human rights violations, particularly in relation to elections and political activism. Whereas international revulsion over the violation of human, civic and political rights

is fairly recent, state-sanctioned violence, killings and displacements did not begin with the emergence of the MDC in 1999. In the early years of independence, the ZANU-PF government used military and other security forces to:

crush its only viable opponent, PF ZAPU ... in an operation called Gukurahundi (the rain that sweeps away the chaff), to solve a political problem that could have been resolved through political means.⁴⁰⁸

Preparing the nation for the human carnage that was to come in Matabeleland and Midlands provinces, in a speech to parliament in 1982, Mugabe, who was prime minister and minister of defence at that time, said, ‘an eye for an eye and an ear for an ear may not be adequate in our circumstances. We might very well demand two ears for one ear and two eyes for one eye.’⁴⁰⁹ And so it was that when the 5th Brigade was finally withdrawn from Matabeleland and Midlands, an estimated 20 000 civilians⁴¹⁰ had lost their lives and thousands more had been more displaced. In response to domestic and international pressure, in 1983 the (then) prime minister Robert Mugabe appointed the Zimbabwe Commission of Inquiry into the Matabeleland Disturbances, which is also known as the Chihambakwe Commission (named after its chairman Simplisius Chihambakwe).

Predictably, the findings of the Chihambakwe Commission of Inquiry into disturbances that occurred in Matabeleland between December 1982 and March 1983 never saw the light of day. The government’s scorched earth policy against the opposition PF ZAPU achieved the desired objective of driving PF ZAPU into submission, leading to the latter’s absorption by the former on 22 December 1987 under the name ZANU-PF. The date on which the fate of PF ZAPU was sealed is now part of the calendar of Zimbabwe as National Unity Day. State-sanctioned and condoned violence has not abated throughout the history of Zimbabwe.

Depending on the source, between the Gukurahundi massacres and the consummation of the inclusive government between ZANU-PF and the MDC in February 2009,

[the] estimated cumulative toll for the Gukurahundi and post 2000 military operations is more than 40 000 dead, 10 000 missing and more than 300 000 internally displaced persons.⁴¹¹

Should this be true, the number of deaths, missing persons and internally displaced persons under the Mugabe majority government could surpass fatalities of the armed liberation struggle, to which Mugabe himself was party, against Ian Smith's minority government from July 1964 to 1979.

At independence, apart from the contentious provisions retaining 'minority rights ... on the future of land ownership in the country, and guaranteed white representation in parliament',⁴¹² which were obviously incongruous with and offensive to majority rule, the Lancaster House Constitution did not address security sector reform (SSR) in general, and reform of the military in particular. People such as Joshua Nkomo had wanted the military question to be fully addressed at Lancaster House, but this did not happen. The conference went only as far as providing for a 'constitution, ceasefire, the installation of a transitional authority, the temporary cantonment of fighting forces and the holding of supervised elections'.⁴¹³ Once the political questions on majority rule had been addressed, discussions on the architecture and mandate of the security sector and the military were left to the incoming government of the newly independent state.

Indeed, 'political and socio-economic transformation would be worthless in the absence of meaningful military integration'.⁴¹⁴ Hence, the newly elected government was faced with the unenviable task of integrating the erstwhile foes, namely the liberation armies – the Zimbabwe People's Liberation Army (ZIPRA), and the Zimbabwe African National Liberation Army (ZANLA) – and the Rhodesian Security Force (RSF). This process, which marked the first taste of security sector reform (SSR) in independent Zimbabwe, entailed not only a merger of the three forces into a single national army, but also demobilisation, disarmament and re-integration (DDR) of those combatants who could not be accommodated in the new security agencies, including the army, air force, police, prison and intelligence services. Through the British Military Advisory and Training Team (BMATT), the former colonial power assisted in mediating between the three forces, and also trained officer corps of the new Zimbabwe National Army (ZNA) and Air Force of Zimbabwe (AFZ). Predictably, this process was not without major ideological and practical contradictions. For example, whereas Mugabe, in his capacity as prime minister and minister of defence, 'espoused the Chinese style of soldiers who also contributed through engaging in food and equipment production, organised more on militia and cadre lines', BMATT was more focused on creating 'purely military

professionals'.⁴¹⁵ These tensions would later manifest in the mutation in the 1990s to a party-cadre-type of security sector that is intrinsically intertwined with the ruling ZANU-PF party and whose backbone is constituted of former ZANLA and ZIPRA combatants and youth militias.

As the government set about establishing a 35 000-strong army from the available 65 000 ZANLA, ZIPRA and RSF forces, the remaining 30 000 were to be demobilised and reintegrated into civilian life. Whereas the demobilised combatants had faith in their leaders and accepted a new life as civilians or 're-settled in food and production enterprises that would continue to service the standing army',⁴¹⁶ some felt abandoned by the newly elected government. It was offensive for the victorious and gallant combatants who had spent their youth fighting to liberate the country, only to discover that their erstwhile enemies from the former RSF were economically better off in liberated Zimbabwe. While the former RSF members had stable social and economic networks, by virtue of having been in regular pensionable military service, the same could not be said of their counterparts from ZANLA and ZIPRA. Before long, many of the demobilised ex-combatants were destitute.⁴¹⁷

The demobilisation process and the socio-economic challenges facing the demobilised combatants do not seem to have been well thought out. This in part led to the rise of a militant war veterans' movement in the late 1980s. Analysts have noted that:

although many veterans [of the liberation struggle] were disgruntled over land, unemployment, neglect and corruption in government throughout the 1980s and 1990s, the government was not too concerned about them as long as its authority was not seriously challenged from other quarters.⁴¹⁸

In April 1989, the unfinished business of DDR gave birth to the Zimbabwe National Liberation War Veterans Association (ZNLWVA), primarily to draw government's attention to the plight of war veterans. The formation of ZNLWVA coincided with the government's adoption of the much-reviled World Bank-supported economic austerity programme – Economic Structural Adjustment Programme (ESAP) – amid rising inflation, job losses and a steadily rising and restive labour movement, and falling standards of living.

In 1991, the government passed the War Veterans Administration Bill, followed by the War Veterans Act, 1992, and the War Victims Compensation Act,

1993. As the name suggests, the War Victims Compensation Act was intended to compensate ex-combatants for injuries suffered during the war of liberation. In no time, however, it became a major avenue for defrauding government through inflated claims for injuries that could not be verified 13 years after the end of the war. A number of current senior security sector officers were implicated directly in the scam, but were never held accountable. Directly related to the economy, in 1997 the government was arm-twisted by the militant ZNLWVA to pay each of the more than 50 000 'war veterans' Z\$50 000 (roughly US\$4 500 at that time), plus monthly pensions of Z\$2 000. Then came 14 November 1997, a day that became known as 'Black Friday' when the Zimbabwe dollar lost 74 per cent of its value from 'around Z\$10 to below Z\$30 to the US\$ over four hours of trading time'.⁴¹⁹ In synchronisation, the stock market followed suit, 'wiping away 46 per cent from the value of shares as investors scrambled out of the Zimbabwe dollar'.⁴²⁰

To obviate the threat that the war veterans' movement posed to its hegemony, over the years ZANU-PF has deftly manipulated the legitimate concerns of ex-combatants and used members of ZNLWVA for its own partisan political purposes. Aided and abetted by the formal security forces, mainly in the military, police and intelligence services, 'war veterans' – or persons purporting to be war veterans – have been involved in a violent campaign against the opposition and the forced removal of white commercial farmers from agricultural land.

Since the establishment of the MDC in 1999 as the most viable challenge to ZANU-PF's hegemony (after the demise of PF ZAPU), the Joint Operations Command (JOC), a throw-back from Ian Smith's Rhodesian days, has been identified as the brains behind and benefactor of the infrastructure of violence on the farms and during the last four elections in 2002, 2005, March 2008 and June 2008. Initially, JOC operated under the:

tactic management of the (ZANU PF) party, but by the time of the 2005 elections it was clear that the JOC was no longer an instrument of the state. It had become an alternative to the state, and was, in effect, a parallel government.⁴²¹

Faced with a multifaceted political, security and humanitarian crisis, SADC (the regional economic community), which has the AU's mandate to find a solution to Zimbabwe's predicament, has been involved in mediation to ensure

that the Global Political Agreement is fully implemented and that the country returns to peace, stability and the rule of law. Tentative progress has been made in persuading the parties to the agreement to abide by its provisions. Following the formation of the inclusive government, SADC has joined the chorus of voices, mainly from the ZANU-PF side of the inclusive government, calling for the unconditional lifting of the sanctions/targeted measures.

On the question of the main obstacle to return to democratic governance – SSR – nothing in the official documents and pronouncements of SADC and the Organ on Politics, Defence and Security Cooperation (OPDSC), the custodian of regional peace and security, suggests that there are visible efforts to ensure that the security sector abides by the constitution and laws of Zimbabwe, and the precepts of civil security relations, although in many respects the security sector holds the key to returning to the rule of law and restoration of citizens' civil and political rights, enshrined even under the current constitution. SADC's lack of focus on the anti-democratic conduct of Zimbabwe's security sector runs against the spirit of its founding charter, the SADC Treaty, which emphasises democracy and the evolution of common political values that are conveyed through legitimate and accountable institutions.⁴²²

CONSTITUTIONAL, POLICY AND LEGAL FRAMEWORKS

The original version of the Lancaster House Constitution provided for a largely ceremonial presidency, with most executive powers concentrated in the hands of the prime minister. The president's term of office was six years and he was elected by an electoral college of parliament. Based on the Westminster system of government, the executive prime minister was the leader of the party with a majority in parliament. From 1980 to 1987 Mugabe served as prime minister. In 1987, the 7th Constitutional Amendment expunged the office of prime minister and replaced it with an executive presidency, in which Mugabe has served from 1987 up to the present. There were no term limits for the prime minister or for the post 1987 presidency. Following the creation of the executive presidency with its excessive powers, it has been argued that executive presidency had turned Mugabe – the only occupant of that office since its creation – into a 'myopic little village tyrant'.⁴²³ For example, among other issues, and in mocking contradiction to Article 7 of the Universal Declaration of Human Rights, which provides that 'all are equal before the law and are entitled

without any discrimination to equal protection of the law',⁴²⁴ the constitution places the president above all other people in Zimbabwe. Constitutionally, while in office, the president is not subject to civil or criminal liability in any court in Zimbabwe. Quite apart from the power to appoint cabinet ministers, the president has power to appoint governors of ten provinces, an appointment which automatically makes such governors non-constituency members of parliament.

The influence and octopus-like control of the president cuts across all facets of political life to the point that, on 21 June 2008, Mugabe declared: 'Only God who appointed me will remove me – not the MDC, not the British.'⁴²⁵

The enormous power of the president and ZANU-PF's large majority in parliament from independence until 2000 meant that there were few control mechanisms against abuse of government power. Parliament was largely a rubber stamp for legislation proposed by the executive. Over the years, parliament has approved a variety of repressive pieces of legislation that have been used to suppress plural voices, opposition and dissent to ZANU-PF hegemony. These iniquitous pieces of legislation that have mushroomed or have been perfected include Access to Information and Protection of Privacy Act (AIPPA) and Public Order and Security Act (POSA), and Broadcasting Services Act. In practice, no distinction has been drawn between the ruling party and the state, because state resources have been used for electioneering and other party activities by the ruling party.

The Lancaster House Constitution has been amended 19 times. Many of the amendments extend and entrench the powers of the president and reverse progressive rulings of the courts on human rights. The feature of the constitution that has contributed most to the current economic and political crisis has been the undue concentration of power in the hands of one person, the president, and by extension, hegemony of the ruling ZANU-PF party, and related abuse of that power.

The National Security Council Act 2009 (No 2 of 2009), which came into force on 4 March 2009, establishes by law the National Security Council (NSC). The NSC is responsible for reviewing national policies on security, defence and law and order, and recommending or directing appropriate action; reviewing national, regional and international security, political and defence developments and recommending or directing appropriate action; considering and approving proposals relating to the nation's strategic security and defence

requirements; receiving and considering national security reports and giving general or specific directives to the security services; ensuring that the operations of the security services comply with the constitution and any other law; and generally keeping the nation in a state of preparedness to meet any threat to security. The NSC Act defines security services as ‘every branch of the Defence Forces; the Police Force; ... the Prison Service; and the Department of State for National Security’.⁴²⁶

Zimbabwe’s state security sector comprises a number of actors, namely Zimbabwe Defence Force (ZDF), Zimbabwe Republic Police (ZRP), Department of State for National Security, more commonly known as the Central Intelligence Organisation (CIO) and Zimbabwe Prison Service (ZPS). Non-state security actors include private security companies, the ZANU-PF-aligned youth militia and their ally, the vocal and militant War Veterans’ Association. The constitution makes provision for the establishment of the ZDF, comprising the army, the air force ‘and such other branches ... as may be provided for by or under an Act of Parliament’.⁴²⁷ In two words, the constitution defines the purpose of the ZDF as ‘defending Zimbabwe’.⁴²⁸ The Defence Act (1972), the revised National Defence Policy (1997)⁴²⁹ and various regulatory instruments provide the legal and policy framework on the governance and management of the ZDF. The Ministry of Defence outlines the constitutional mandate of the ZDF as defending Zimbabwe’s independence, sovereignty, territorial integrity and national interests; participating in the creation of common regional security architecture; contributing to the maintenance of international peace and stability; and providing military assistance to civil authority in times of need.⁴³⁰

The constitution also establishes the ZRP,⁴³¹ consisting of a regular force, a constabulary and ancillary members.⁴³² The Ministry of Home Affairs exercises political authority over the ZRP. It is commanded by the commissioner-general of police, appointed by the president after consultation with a board consisting of the chairman of the Police Service Commission – which is a constitutional body – the retiring commissioner and one other member appointed by the president. The functions of the ZRP are provided in Chapter 11(10) of the Zimbabwe Police Act.

Despite the definition of security services as ‘every branch of the Defence Forces; the Police Force; ... the Prison Service; and the Department of State for National Security’⁴³³ or CIO, the CIO is the only state security service that does not exist in law. In other words, there is no legislation that

establishes and regulates this critical state security sector. The CIO resides in the Office of the President under the political control of the minister of state (internal security).

In addition to the constitutional provisions for the ZPS, the Prison Service Act articulates the establishment and modus operandi of the prisons services. The primary mandate of the ZPS is:

to protect society from the criminal elements through the incarceration and rehabilitation of offenders for their successful re-integration into society while exercising reasonable, safe, secure and humane control.⁴³⁴

The ZPS falls within the security cluster as a uniformed paramilitary institution under the Ministry of Justice, Legal and Parliamentary Affairs. The commissioner of prisons heads the ZPS. The current head is a retired major-general.

DEFENCE

The estimated strength of the ZDF, depending on the source, is between 30 000 and 35 000 men and women.⁴³⁵ The army and air force each consist of a regular force and a reserve force.⁴⁶ Zimbabwe's 1997 National Defence Policy correctly acknowledges and identifies a number of cardinal principles on democratic control of armed forces. These include the defence force's subordination to civilian authority, civilian responsibility for the formulation of defence policy with the technical assistance of the military, civilian responsibility for the political dimensions of defence policy, military execution of defence policy, non-interference of government and politicians with the operational chain of command and non-interference of the government and politicians in the application of the code of military discipline.⁴³⁷

In the last 10 or so years, however, these cardinal principles have been sacrificed on the altar of political expediency in defence of ZANU-PF's hegemony of the state and society. These words by the ZDF commander, Gen Constantine Chiwenga, illustrate graphically the politically partisan nature of the ZDF or important sections of it:

elections are coming and the army will not support or salute sell-outs and agents of the West before, during and after the presidential elections ... We

will not support anyone other than President Mugabe, who has sacrificed a lot for this country.⁴³⁸

Nor is there any evidence of parliamentary or civil society involvement in commenting, formulating, debating or approving the defence policy – let alone oversight – of the National Defence Policy. Zimbabwe does not have a national security policy or, if it exists, it has not been made public.

In addition to constitutional provisions designating the president as commander-in-chief of the defence forces,⁴³⁹ the National Defence Policy provides for the command and control of the ZDF. In that capacity, the president is constitutionally empowered to determine the operational use of the defence forces and the execution of military action; declare war and make peace; proclaim or terminate martial law; as well as confer honours.⁴⁴⁰ In declaration of war, the president acts only on the advice of cabinet without prior approval of parliament.⁴⁴¹ So in August 1998 an estimated 11 000 Zimbabwean soldiers – alongside Angolan and Namibian troops – were deployed in the DRC conflict. Zimbabwean troops stayed for four years. The non-involvement of parliament in such important decisions is cause for concern. This lacuna was aptly articulated by the current minister of finance, Tendai Biti, in parliament in 2000:

The prerogative of making war and declaring war is not an absolute prerogative that a head of state has. I say so for the reason that any war involves financial implications and to the extent that Parliament is the controller of financial resources in terms of Article 101 of the Constitution of Zimbabwe it means a fortiori that, before the presidential prerogative of declaring war is invoked, approval of Parliament must be sought because at the end of the day, it is Parliament which controls resources.⁴⁴²

As commander-in-chief of the ZDF, the president chairs the State Defence Council (SDC), which until the coming into being of the NSC, was officially ‘the highest body responsible for national security affairs’.⁴⁴³ Although the NSC Act does not explicitly say so, from a functional and legal point of view the NSC appears to have effectively replaced the SDC. The term ‘officially’ is used advisedly. In practice, unlike the pre-independence ‘tactical-level Rhodesian JOC’, today’s JOC operates at ‘grand strategic level’.⁴⁴⁴ Not only has it descended into the domestic political arena, it has become the apex of defence (and national

security) policy formulation and execution. Below the NSC is the Defence Policy Council (DPC), which is chaired by the political head of defence (minister), the principal accounting officer (permanent secretary), the 'professional head of all Defence Forces'⁴⁴⁵ (chief of defence forces) and the commanders of the army and air force. The head of the Treasury (minister of finance) has ex-officio status on the DPC. Other structures envisaged in the National Defence Policy include the Defence Command Council and a programming and planning element with membership from the various decision-making levels.

Despite what the National Defence Policy states, many security analysts believe that in practice the JOC had taken the place of the SDC. The establishment of the JOC under Ian Smith sought to integrate operations of the police, army and air force as part of the Rhodesian government's military reorganisation to better fight the African nationalist movement,⁴⁴⁶ but the current JOC appears to have a somewhat similar regime security mandate and is consistent with Mugabe's pronouncement of a 'war cabinet' in 25 August 2002. As evidenced from the abductions and torture of opposition, media and civil society activists, and active participation of the military in these extra-legal manoeuvres, the government has behaved as if it were dealing with an insurgency. Some analysts have observed that prior to the 2000s, the JOC had 'concentrated on purely military affairs, which included the Gukurahundi war in Matabeleland, the ZDF operations in Mozambique, and the DRC campaign in the late 1990s',⁴⁴⁷ further evidence of ZANU-PF's hankering after a one-party state and the unfinished business of turning the politico-military of 1979 into a modern professional army. Added to the original membership of the JOC is the spy agency – the CIO – which has always been associated with protecting and entrenching the hegemony of Mugabe and ZANU-PF, and intimidating voices of dissent and the ZPS. Some have argued that in 2008 the governor of the Reserve Bank had been co-opted into the JOC to ensure adequate financial resources for the 'war' chest.

For the first time in the history of the country, the National Security Council Act 2009 (No 2 of 2009), which came into force on 4 March 2009, establishes, by law, the NSC. The act defines security services as 'every branch of the Defence Forces; the Police Force; ... the Prison Service; and the Department of State for National Security'.⁴⁴⁸ In terms of the law, the NSC is responsible for reviewing national policies on security, defence and law and order, and recommending or directing appropriate action; reviewing national, regional and international

security, political and defence developments and recommending or directing appropriate action; considering and approving proposals relating to the nation's strategic security and defence requirements; receiving and considering national security reports and giving general or specific directives to the security services; ensuring that the operations of the security services comply with the constitution and any other law; and generally keeping the nation in a state of preparedness to meet any threat to security.

The membership of the NSC almost mirrors that of the SDC. It comprises the president, the two vice-presidents, the prime minister and the two deputy prime ministers, the ministers responsible for finance, defence and the police and one minister each nominated by the parties to the Global Political Agreement, namely MDC-T, MDC-M and ZANU-PF. Also sitting as members of the NSC are the minister of state in the President's Office responsible for national security; the chief secretary to the president and cabinet; the chief secretary to the prime minister; the service chiefs, namely the commander of the ZDF, the commanders of the army and the air force, the commissioner-general of police and the commissioner of prisons as well the director-general of the Department of State for National Security. Section 5 of the NSC Act provides that the council meet at such times as the president, in consultation with the prime minister, provided that it meets at least once a month.

Because it is a product of, and therefore made in the image of the transitional inclusive government, the NSC Act, and consequently the NSC itself, will cease to exist 'on the date on which the Interparty Political Agreement (between ZANU-PF, MDC-T and MDC) terminates'.⁴⁴⁹ This poses significant challenges for sustainable SSR initiatives which should go beyond the life of the inclusive government.

In addition to the powers and functions vested in the NSC and in the president as commander-in-chief of the ZDF, the constitution mandates the president to appoint a member of cabinet as minister of defence 'to manage the political daily functions of the military to whom the commanders report'.⁴⁵⁰

In terms of the Defence Act, the chief of defence forces, who is appointed by the president on the advice of the minister, is responsible for commanding and controlling the members and equipment of the defence forces and using them to best advantage; maintaining proper discipline within the defence forces; improving or simplifying the organisation, methods and procedures of the defence forces; and securing the most economic and efficient utilisation of the resources provided for the maintenance of the defence forces.⁴⁵¹

The commanders of the ZNA and AFZ – who exercise command and control of their forces under the overall direction of the chief of defence forces – are appointed by the president after consultation with the minister of defence. Section 96(4) of the constitution, read with Sections 7 and 12 of the Defence Act, provides that in giving his advice or recommendations the minister must act in consultation with a board consisting of the chairperson of the Defence Forces Service Commission, the retiring commander and one other person appointed by the president.

In terms of control of the defence forces by the minister and permanent secretary, the Defence Act stipulates that the chief of defence forces shall report to the minister on all matters under his charge in the day-to-day discharge of his duties; advise the minister on matters of general policy relating to the defence forces; carry out any other duties that the president, acting through the minister, may require him to carry out and account to the secretary for the efficient and economic use of the funds and assets of the defence forces.⁴⁵²

Further research is required on how the ZDF relates in practice with the Ministry of Defence. Interviews conducted with former military officers suggest a possible blurring of executive accountability mechanisms between the ZDF and the ministry. Apparently this has been particularly pronounced since the top brass of the ZDF assumed a politically partisan posture.

INTELLIGENCE

The CIO is Zimbabwe's main civilian intelligence agency. It was inherited en bloc from the Rhodesian government, and resides in the Office of the President under the political control of the minister of state. The number of CIO personnel in Zimbabwe is estimated at between 8 000 and 10 000, with scores of informers and auxiliary staff within and outside the country.⁴⁵³ Its budgetary provisions are provided for under the Office of the President, thus insulating it from parliamentary and public scrutiny. The CIO is the only state security agency that is neither mentioned nor provided for in the constitution or the law. It is, therefore, not only secretive in its operations, but also equally secretive and non-existent in law.

The pervasive nature and importance of the CIO is underlined by the fact that its head (director-general) has been part of the JOC and now sits on the NSC alongside other security chiefs. But 'whereas CIO operatives wield considerable

“private” power, [the] CIO boss ... is lower in the security hierarchy⁴⁵⁴ than the commanders of the ZDF and the ZNA. Although its core mandate is:

intelligence gathering, the CIO has also engaged in paramilitary operations and is heavily implicated in Zimbabwe’s culture of violence ... The CIO is notorious for abductions and the use of torture to extract information.⁴⁵⁵

Typically, an intelligence service such as the CIO does not possess the power of arrest. However, instances abound where CIO operatives have ‘arrested’, detained and tortured people before releasing them or handing them over to the police. The example of human rights activist Jestina Mukoko and others is a case in point. The state feels justified in using the CIO to conduct investigations and to exercise police powers where the excuse is that the security of the state is at stake.⁴⁵⁶ Oddly, the courts appear to have accepted that an intelligence-gathering service such as the CIO can exercise police powers in such cases. In the Jestina Mukoko case, High Court Judge Justice Chitakunye did not appear concerned about the legality of the CIO exercising police powers. He ruled that the identities of the state security agents concerned must remain secret, as revealing them would ‘compromise national security’, although serious allegations of human rights violations had been made against the agents.⁴⁵⁷

In March 2010, President Mugabe unilaterally transferred to his office⁴⁵⁸ the administration of the Interception of Communication Act (ICA), which seeks to:

establish an Interception of Communication Monitoring Centre and for the appointment of persons to that centre whose function shall be to monitor and intercept certain communications in the course of their transmission through a telecommunication, postal or any other related service system.⁴⁵⁹

The act is generally considered iniquitous to a free society and an invasion of citizens’ right to privacy. Notably, members of JOC, namely the chiefs of defence and intelligence, the director-general of the president’s Department of National Security, and the commissioner of police are among the persons authorised to

make applications for interception of communications. Effectively, interception of communication and the Communication Monitoring Centre will now fall under the CIO – which is currently unlegislated for and beyond parliamentary scrutiny – as opposed to the Ministry of Information Communication Technology, which, under the inclusive government, happens to be held by the erstwhile opposition MDC.

POLICING

The Zimbabwe Republic Police (ZRP) numbers 25 000 members. The ZRP is organised by province, and consists of uniformed national police, the Criminal Investigation Department, and traffic police. It includes specialised support units, including the (paramilitary) Police Support Unit and riot police and the Police Internal Security and Intelligence unit. The police commissioner-general exercises overall command of the force.

Like all other security forces in Zimbabwe, the police have been embroiled in the political conflict. The International Bar Association Human Rights Institution Report (IBAHRI) noted that:

the Zimbabwe Republic Police (ZRP) has abdicated its constitutional functions, responsibilities and obligations. Police officers are responsible for some of the most serious human rights and rule of law violations in Zimbabwe today. The ZRP has consistently shown disrespect and contempt for the law, lawyers and judicial authorities to an extent that has seriously imperilled the administration of justice and the rule of law in Zimbabwe. Far-reaching reforms and reorientation are necessary to bring Zimbabwe's policing operations into conformity with constitution and regional and international human rights standards.⁴⁶⁰

CORRECTIONAL SERVICES

The ZPS is a uniformed para-military organisation responsible for prisons within the Ministry of Justice, Legal and Parliamentary Affairs. It is the only agency responsible for maintaining security at all prison facilities. The ZPS is headed by a commissioner of prisons. The current commissioner is a retired major-general from the ZNA. According to the official ZPS website, there are

42 prisons with a total capacity of approximately 17 000. Female prisoners constitute 3 per cent and juveniles 1,8 per cent of the total prison population. This information, however, is seriously outdated and incorrect. The report of the Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender (ZACRO), October 2008, states there are 55 prisons (including satellites) with a capacity of 17 000. The total number of prisoners, however, is estimated at 35 000, which is more than double the capacity.⁴⁶¹

Prisons are seriously neglected and (ab)used for political purposes. In 2000 to 2008, especially in the pre-election period of 2008 up until the formation of the inclusive government, the prison system was frequently used as an instrument of political repression. Ongoing arbitrary arrests and long periods of detention without formal charges were instrumental in ZANU-PF's efforts to repress political opposition throughout this period and in particular to coerce the electorate to support ZANU-PF in the 2008 elections. Even following the establishment of this government of national unity, political repression continues. Arbitrary arrests by police forces involve the prison system, because, owing to overcrowding in police stations and remand prisons, pre-trial detainees are often held in prisons with convicted prisoners until their bail hearings.⁴⁶² Prison officials reportedly campaigned actively for ZANU-PF. Promotions in the system are closely linked with officials' loyalty to ZANU-PF. If officials want to retain their positions, loyalty to ZANU-PF is a requisite. Prison Services Commissioner Paradzayi Zimondi, himself a former ZANLA combatant, reportedly openly ordered his staff to vote for Mugabe.⁴⁶³

The virtual collapse of the Zimbabwean prison system after 2000 made it difficult to assess the appropriateness of the Zimbabwe Prison Act. This act, if implemented, could form a good foundation for the prison system, although certain reform is recommended. For instance, Part XVII of the Zimbabwe Prisons Act (ZPA) still allows for corporal punishment in violation of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Zimbabwe retains the death sentence and has not ratified the United Nations Convention against Torture (CAT) or its Optional Protocol (OPCAT).

The general political climate, lack of rule of law and respect for human rights and the dire economic situation of the country are currently the greatest obstacles to the proper functioning of the prison system. Increased budget allocations to ensure better nutrition, sanitation and healthcare are urgent,

while additional reform of the justice and security sector as a whole should take place in a comprehensive manner. Alternatives to imprisonment such as community service and the open prison system, which have shown great potential in Zimbabwe, should be expanded.

Since the signing of the Global Political Agreement (GPA), the general economic situation has improved and debates on reform, including constitutional reform, have commenced. This new political climate, although still problematic, opens the door to SSR, including the prison sector. No specific initiatives to this end, however, have been started, save for humanitarian assistance to prisoners by the ICRC and faith-based groups.

YOUTH MILITIA

The Youth Militia is a non-statutory security apparatus that has been at the centre of controversy and insecurity among the population. In the early 2000s, the concept of national youth service (NYS) was introduced. Officially, NYS was aimed at equipping young Zimbabweans with practical skills that could be used in creating employment for themselves and others. With time, the youth started to receive military-style training and indoctrination against the opposition.⁴⁶⁴ Initially, training was undertaken at Border Gezi camp, in Mashonaland Central, where the ruthless youth militia widely known as Green Bombers – apparently because of their green uniforms – were produced. With time, more centres were established across the country. During the 2008 elections, some of the youth training centres were turned into torture centres where opposition activists were abducted and brought in for torture. ‘In return for their services, they are rewarded with immunity from prosecution and with jobs in the military and police forces.’⁴⁶⁵

These Green Bombers have largely operated with impunity and, like the so-called war veterans, believe themselves to be above the law. They are seldom arrested or prevented from breaking the law. In their extra-legal activities, they have often operated under the direction of war veterans and alongside government agencies, including the police. In times of famine, they have been involved in the politicisation of government food distribution through the control of Grain Marketing Board sales. Youth militia have also been implicated in denial of access to healthcare on politically partisan grounds, and in destruction of independent newspapers. There are many accounts of youth

militia being implicated in theft and vandalism and usurping the powers of law-enforcing agencies.

Apart from having committed crimes against their fellow Zimbabweans, including family and neighbours, the youth militia have themselves become victims of human rights abuses in the course of their training.⁴⁶⁶ Under international law, to train anyone militarily under the age of 18 is to create a child soldier. While an overall record of the ages of trained youth is not publicly available, ad hoc information suggests that children younger than 18 have been through militia training. Conditions in the training camps are confirmed to be severe, particularly in the first year of implementation. Rampant sexual activity among youth militia themselves has been widely reported. Female youth militia have reported systematic rape in some camps, involving girls as young as 11 years. Youth pregnancies, and sexually transmitted infections, including HIV, have been reported as resulting from youth militia training experiences from a variety of sources. Camp instructors have been implicated among the rapists.

Ironically, the parties to the GPA – including those that have been on the receiving end of the youth militia – endorsed the continuation of NYT. The GPA thus provides that:

recognising the desirability of a national youth training programme which inculcates the values of patriotism, discipline, tolerance, non- violence, openness, democracy, equality, justice and respect ... [T]he Parties hereby agree that:- (a) all youths regardless of race, ethnicity, gender, religion and political affiliation are eligible to participate in national youth training programmes; (b) the National Youth Training Programme must be run in a non- partisan manner and shall not include partisan political material advancing the cause of any political party.⁴⁶⁷

INDEPENDENT OVERSIGHT AND ACCOUNTABILITY

The normative strength of democratic civilian rule emanates from, and is predicated on a representative and effective legislature which functions to check the excesses of executive power.⁴⁶⁸

The representative nature of a legislature is reflected in its contribution to policy making, democratic development and governance that best reflects the character

and aspirations of the nation in its diversity. Effectiveness is evident when the legislature ensures that laws, policies and budgets do not pass through, but are passed by it.

Ensuring that government behaves⁴⁶⁹ is even more vital in the security sector, not least because ‘the state is the only actor in society that has the legitimate monopoly of force³⁷⁰ that can, if not properly checked, be abused. The secretive nature of aspects of the work of the security sector heightens the risk of subversion of the rule of law, and abuse of both power and public resources in the name of security. The exercise of oversight of the security sector is not limited to the legislature and its committees. Civil society organisations, the media and intellectual communities perform critical societal accountability functions, while independent agencies such as human rights commissions, the comptroller and auditor-general and the ombudsman provide important horizontal accountability functions.

The constitution of Zimbabwe provides that ‘[t]he legislative authority of Zimbabwe shall vest in the Legislature which shall consist of the President and Parliament’.⁴⁷¹ Zimbabwe has a bi-cameral legislature, comprising the Senate and House of Assembly. On paper, oversight of the executive, and by extension that of the security sector in Zimbabwe, is provided for through a number of mechanisms. Parliament is responsible for making laws necessary for the articulation of public policy. Through the power of the purse, parliament is also responsible for approving budgets, without which the executive bureaucracy would not be able to function. Parliament is also responsible for the ratification of international conventions and the related domestication of such conventions into the local legal framework. Finally, in plenary and through its committees, parliament exercises important oversight and investigative functions through, among other means, holding debates, asking questions, commissioning inquiries, and undertaking inspections and study visits.

There are two security-related committees in the Parliament of Zimbabwe, one in the House of Assembly, referred to as the Portfolio Committee on Defence and Home Affairs, and the other in the Senate, referred to as the Thematic Committee on Peace and Security. Both committees are currently chaired by members of the (former) opposition. Interestingly, none of the 11 members of the Portfolio Committee on Defence and Home Affairs is a woman. The Portfolio Committee on Defence and Home Affairs is responsible for matters relating to the ZDF and the Zimbabwe Republic Police (ZRP). The ZPS and the criminal

justice system in general fall under the Portfolio Committee on Justice, Legal Affairs, Constitutional and Parliamentary Affairs. In Zimbabwe, parliamentary portfolio committees are mandated to consider and deal with all bills and statutory instruments or other matters (in defence and security) which are referred to it by or under a resolution of the House or by the Speaker; consider or deal with an appropriation or money bill or any aspect of an appropriation or money bill referred to it by the standing orders or by under resolution of this House; monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, policy or any other matter it may consider relevant to the government department falling within the category of affairs assigned to it, and may for that purpose consult and liaise with such department; and consider or deal with all international treaties, conventions and agreements relevant to it, which are from time to time negotiated, entered into or agreed upon.

Typically, parliamentary portfolio committees are empowered to summon any person to appear before them to give evidence on oath or affirmation; summon any person to appear before them to produce any documents required by them; receive representations from interested parties; decide whether to permit oral evidence or written submissions to be given or represented before them by or on behalf of an interested party; determine the extent, nature of form of their proceedings, as well as the evidence and representations to be given or presented before them; exercise such other powers as may be prescribed or assigned to them by any law, rules or resolutions of the House, and examine expenditure administration and policy of government departments and other matters falling under their jurisdictions as parliament may by resolution determine.

Unfortunately, in the absence of legislation creating and governing the CIO, coupled with its inconvenient location in the Office of the President, it is significant and of serious concern to note that the CIO is not subject to parliamentary oversight.

Democratic oversight of intelligence services should begin with a clear and explicit legal framework, establishing the intelligence organisations in state statutes, approved by parliament. Statutes should further specify the limits of the services powers, its methods of operation, and the means by which it will be held accountable.⁴⁷²

This is certainly not true of Zimbabwe. In view of the persistent allegations of human rights violations and extra-legal conduct of the intelligence services or persons suspected to be members of the CIO – some of which have been proved in court – throughout the history of independent Zimbabwe, lack of parliamentary oversight of this sector is one of the most significant weaknesses in legislative oversight of the security sector. Equally, it is inconceivable that non-state actors such as civil society or the media could possibly exercise any oversight on this sector where parliamentary oversight is excluded.

An analysis of successive verbatim reports of parliament – Hansard – and interviews with parliamentary officials suggest that the budget of the Office of the President and cabinet, which includes the CIO, has never been substantively debated in parliament. Year after year, it has been passed without debate. Likewise, no parliamentary committee has been involved in the exercise of investigative and related oversight functions for this office, although nothing in the constitution, law and standing rules and orders debars MPs from debating budget votes of any government and quasi-government department.

Sections 97 and 98 of the Defence Act provide for the establishment and functions of the Defence Force Service Commission. This commission consists of the chairperson (who is also the Public Service Commission chairperson) and two to seven other members appointed by the president. In terms of these sections, the other commissioners are chosen ‘for their ability and experience in administration or their professional qualifications’. At least one of the commissioners must be a former senior member of the defence forces, with no fewer than five years’ service. Among other functions, the commission is required to make recommendations to the minister regarding salaries and general conditions of service of members of the defence forces; inquire into and deal with complaints relating to disciplinary action, by any member of the defence forces; inquire into and investigate administrative or financial practices and procedures of the defence forces, including requiring the production of any document, book or other record; and summoning and examining witnesses as may be necessary.⁴⁷³ Significant to the commission’s oversight mandate, the Defence Act accords the commission the same powers as those conferred upon commissioners in terms of the Commissions of Inquiry Act (Chapter 10:07) minus the power to order that a person be detained in custody.

A similar commission exists in the Police Service. In addition to its role in the appointment of the commissioner-general, the Police Service Commission

deals with complaints by members of the police force.⁴⁷⁴ Subject to the commissioner-general's consent, the commission is empowered to investigate police practices, require production of documents, summon witnesses and obtain evidence from police officers. But because the commission requires the consent of the commissioner of police in the course of its investigations, this compromises its potential police oversight role.

The police have an Internal Investigations Department that is responsible for investigating complaints against the police, which can include unnecessary detention or violence and neglect or ill treatment of detainees or other people. According to Human Rights Watch, however,

there are no proper internal police mechanisms for investigating cases of police and those incidents of torture and excessive use of force by the police are rarely investigated.⁴⁷⁵

Police investigatory procedures are apparently 'fraught with conflicts and a bias against anti-police testimony', mainly because police officers 'are often reluctant to testify against their peers'.⁴⁷⁶ In addition, the police have failed to put in place 'credible grievance and investigatory procedures that do not expose complainants to retaliation or victimisation'.⁴⁷⁷

Sections 107 and 108 of the constitution provide for an independent oversight structure – the ombudsman – tasked with investigating cases of administrative malpractice and alleged contravention of the Declaration of Rights by members of the defence forces, police, government departments and the prison service. The ombudsman has the power to make recommendations to various arms of government. On the advice of the Judicial Service Commission, the president appoints the ombudsman for a three-year term, renewable once. The ombudsman, who must hold legal qualifications, is protected from political interference and is independent. Significantly, Section 9 of the Ombudsman's Act prohibits the ombudsman from investigating any action taken by the president or his personal staff, judicial officers, the attorney-general, or the 'secretary to the ministry which is responsible for giving legal advice to the government and any member of their staff'. By placing the president and his staff beyond the scrutiny of the ombudsman, this deals a fatal blow to government accountability and possible abuse of power.

Since the establishment of the office in 1982 in terms of the Ombudsman Act (Chapter 10:18), to all intents and purposes the ombudsman has existed only in name. Even at the height of proven human rights violations by state agencies in the mid 1980s and in early 2000, the Office of the Ombudsman was eloquent in its silence, supposedly because the office acts only when approached with a complaint.

The recent establishment of the Human Rights Commission (HRC), through the 19th amendment to the constitution, was one of the major positive outcomes of the GPA. The constitution now provides for an HRC with these functions: promoting awareness of and respect for human rights and freedoms at all levels of society; promoting the development of human rights and freedoms; monitoring and assessing the observance of human rights in Zimbabwe; recommending to parliament effective measures to promote human rights and freedoms; investigating the conduct of any authority or person, where it is alleged that any of the rights in the Declaration of Rights has been violated by that authority or person; and assisting the minister responsible for the Act of Parliament ... to prepare any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

In addition, the HRC may require any person, body, organ, agency or institution, whether belonging to or employed by the state, a local authority or otherwise, to provide the commission annually with such information as it may need for preparing and submitting any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party. Quite significantly, the HRC is empowered to take over and continue any investigation that has been instituted by the public protector in terms of Section 108(1), where it determines that the dominant question in issue involves a matter pertinent to its function referred to in Subsection (5)(e); or refer to the public protector for investigation in terms of Section 108(1) any matter in respect of which it determines that the dominant question in issue involves a matter pertinent to the functions of public protector.

Further, an act of parliament may confer power on the HRC to conduct investigations on its own initiative or on receipt of complaints; visit and inspect prisons, places of detention, refugee camps and related facilities in order to ascertain the conditions under which inmates are kept there, and to make recommendations

regarding those conditions to the minister responsible for administering the law relating to those places or facilities; visit and inspect places where mentally disordered or intellectually handicapped persons are detained under any law in order to ascertain the conditions under which those persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places; and secure or provide appropriate redress for violations of human rights and for injustice.⁴⁷⁸ The HRC's investigating powers in respect of 'places of detention ... and related facilities' is particularly important, given the overcrowding, inhuman and squalid conditions⁴⁷⁹ in which imprisoned persons find themselves in Zimbabwe.

Because of the compromises that had to be made in the selection by parliament and appointment of members of the HRC by the president, it remains to be seen whether the HRC will be allowed to exercise its powers. Of particular concern is whether adequate financial, human resource and institutional mechanisms will be put in place to effectively and efficiently execute its mandate. Among other factors, these deficiencies have been the Achilles' heel of many similar commissions and ombudsmen offices in Africa.

Part VII of the ZPA provides for a number of oversight mechanisms, both governmental and non-governmental. Article 44 provides that the vice-president, judges, ministers and deputy ministers may visit prisons, while the vice-president, ministers and deputy ministers and any judge of the Supreme or the High Court may visit and inspect any prison at any time with full access to all areas and the full documentation of the facility. Article 45 gives the same powers to magistrates as 'visiting justices' of the prisons situated in the area of their jurisdiction. Articles 48 to 50 prescribe a mechanism of so-called official visitors to be appointed by the minister. Articles 50 and 51 give access to ministers of religion and probation officers or prisoners' aid representatives respectively, although these visits need the approval of the commissioner. ZACRO report of October 2008, however, notes that judges, magistrates, lawyers and prosecutors were not visiting prisons in order to ensure proper oversight.⁴⁸⁰

ROLE OF CIVIL SOCIETY

Security sector architecture and governance arrangements in Zimbabwe make no provision for civil society participation in governance of the security sector, except through interface with parliamentary processes. In recent times,

especially in the context of the GPA, a number of civil society initiatives aimed at entrenching civil society participation in SSG have gained momentum. Among these is the Zimbabwe Peace and Security Programme (ZPSP), a coalition of Zimbabwean NGOs and international partners intent on contributing to effective and sustainable transformation of the security sector in order to enhance the democratic governance and security of Zimbabwe. The work of ZPSP is informed by best practice and founded on the principle of national ownership. The programme aims to work with state and non-state actors in developing an all-inclusive dialogue with, and consensus among national stakeholders. Key to its interventions are the effective mobilisation and support for civil society participation and the role of women and marginalised and excluded stakeholders and communities in security sector transformation.⁴⁸¹

A number of NGOs actively monitor the prison system. They function under the common constraints of the civil society sector in Zimbabwe and have limited access. ZACRO, Zimbabwe Lawyers for Human Rights, Legal Resources Foundation and Zimbabwe Peace Project are among the NGOs active in this field. They are all members of Zimbabwe Human Rights NGO Forum, which issues monthly reports on human rights violations and political violence and special reports on several topics, including torture. The Zimbabwe Civic Action Support Group has also addressed the prison system in their campaigns, and their blog, 'This is Zimbabwe', has repeatedly reported on the human rights violations and general flaws in the prison system.⁴⁸² In addition, several organisations, mainly faith-based, provide providing food and other supplies to prisoners. In mid 2009 the International Committee of the Red Cross (ICRC) reported that it was providing food to more than 6 300 prisoners in Zimbabwe and expected that the number would increase.⁴⁸³

The media have played a significant role in creating public awareness of human rights violations. Given the general climate of political repression, it is difficult for those in Zimbabwe to openly criticise authorities. Several media sources, however, continue to report for example on the deplorable state of prisons in Zimbabwe.

KEY CHALLENGES AND RECOMMENDATIONS

Over the past ten years, the government has placed former members of the army in key government positions.

The security sector is known for its brutal interference in democratic processes. For example, in Operation *Makavhotera Papi* (Whom did you vote for) in the preparatory period before the June 2008 run-off presidential election the military combined forces with the police, CIO, war veterans and the youth militia in an orgy of violence against opposition supporters and the general population.

A subtle coup in fact took place in Zimbabwe, where the country and ZANU-PF are now under the control of the security service chiefs. Under their watch, an intricate politico-military-economic complex has emerged and currently governs the country.

Much of what has happened in Zimbabwe's broader governance sphere and that of the security sector has happened despite constitutional and legal instruments.

Over the years, the government has set out to transform the military, law enforcement agencies, the intelligence service, the prosecution service and the judiciary into politically partisan agencies that serve and advance the interests of the governing party. The police and prison service have also been purged of officers considered sympathetic to the MDC, and war veterans and youth militia have been placed in strategic positions in these services.

Could it be fear of prosecution for human rights violations dating back to the Gukurahundi days or maybe fear of losing plum farmland and ill-gotten wealth that the ZDF leadership want the status quo to remain? All these – and the nostalgia of liberation heroism – should be borne in mind in Zimbabwe's security sector-reform discourse. Any discussion that neglects the socio-economic, political and criminal dimensions of the stunted security sector debate in Zimbabwe is doomed to fail.

The openly partisan role of Zimbabwe's security sector raises the question: What needs to be done to improve SSG in Zimbabwe?, particularly in the context of the constitution-making process being contemplated and elections that will follow. What guarantee is there that under the current arrangements, that if fresh elections are held in the near future and a party or candidate other than the one preferred by the securocrats wins, the government arrangements will be any different?

In recent times, the case, challenges and opportunities for SSR in Zimbabwe have been argued by a number of defence and SSG scholars. Some have also debated the form that such reform should take. Table 4 illustrates some of the challenges and opportunities attendant on SSR in Zimbabwe.

Table 4 Challenges to and opportunities for security sector governance in Zimbabwe

Challenges	Opportunities
Fragile and contested political terrain which does not augur well for SSR discourse	Establishment of a National Security Council with membership from more than one political party
The security sector's unwillingness to engage in SSR, given that the sector was involved in previous SSR initiatives not too long ago	Zimbabwe's desire/desperation to re-engage with the international community on development and re-construction opens the door to the inclusion of SSR dialogue
The challenge of changing the mindset of securocrats and some in the political leadership from state security-centric approach to a human security approach	Disillusionment among former and serving members of the security sector with 'politicisation, low pay, indifferent accommodation and decreasing professionalism in the security sector', resulting in lack of respect from the public
Tying the lifespan of the NSC to the life of the inclusive government presents the risk of a relapse to the status quo if the it were to collapse.	Private citizens, media and organised civil society and political parties have argued in favour of a dialogue on SSR
ZANU PF factions and succession battles could stymie SSR	The national healing and reconciliation process could be a useful anchor for SSR
Inconclusive/unsuccessful constitution-making process resulting in return to status quo	Constitution-making process provides a useful and long-lasting entry point for SSR especially in preparing for a national security policy

Source Adapted from Chitiyo 2009⁴⁸⁴

Only a few meetings of the NSC have taken place since the establishment of the inclusive government, and no substantive details of the outcome of these meetings have been made public. Parliament and civil society remain excluded from developments associated with the NSC. But the mere establishment of the NSC, as part of the transition towards a new constitutional dispensation, is a positive development in beginning the process of returning the country to democratic governance of the security sector.

The media in Zimbabwe have been under serious threat for the past decade or so. Zimbabwe ranks among the few countries in Africa that have passed access to information legislation, although it does more to stifle media freedom and access to information than the name suggests. The Access to Information and Protection of Privacy Act (AIPPA) is part of a battery of repressive and

anti-democratic legislation that has accompanied the stranglehold of the state on citizens' fundamental freedoms and threatened the free flow of information in the country in the last 10 or so years. Contested media-related pieces of legislation include the Public Order and Security Act, the Broadcasting Services Act, Criminal Law (Codification and Reform) Act and the General Laws Amendment Act. In the context of the inclusive government, there is cautious optimism that the recently created Zimbabwe Media Commission, politics permitting, will usher a new era of genuine access to information and media freedom in Zimbabwe.

Coupled with the partisan nature of sections of the police highlighted above, the belief that the Office of the Attorney General is not entirely independent and free from partisan political influences has severely eroded public confidence in the criminal justice system.

Finally, these issues must be central to any discussion on SSR in Zimbabwe:

- Strengthening the constitutional and legal framework establishing and setting forth the mandate, governance, management, control and oversight of all sections of the security sector, without exception
- Establishing a permanent secretariat for the NSC to ensure continuity, effectiveness and greater coordination with the executive, parliament and civil society
- Strengthening the role of parliament in debating and passing national security and defence policy, in addition to voting and scrutinising budgets and operational, procurement and other issues as they relate to the security sector
- Ensuring that all organs of the security sector, including intelligence agencies, are provided for in the law and subject to democratic control and oversight
- Clarifying the role of the executive in controlling the security sector and those of parliament, civil society and media in exercising oversight on the security sector, in line with international practice
- Enhancing the mandate and capacities of the Human Rights Commission and the ombudsman to effectively carry out their respective mandate
- Entrenching in the law the role of the judiciary in guarding against potential abuse of power by the security sector
- Clarifying the role of non-statutory agencies such as the youth militia

- Enhancing the knowledge and institutional capacities of relevant parliamentary committees to exercise effective oversight on the security sector
- Enhancing media and civil society literacy of the workings and principles of democratic control and oversight of the security sector

9 Conclusion

This study of the security sector in six Southern African states has highlighted the political, constitutional and legal environments in which the security sector operates, the nature of the actors, the extent of oversight and the role that civil society has played in its governance. Key challenges were identified for each of the countries and for the SADC Organ. The major challenges are recaptured here for they provide insight into where reform is most required.

For the SADC Organ:

- Develop SADC guidelines on SSG for the region
- Promote the development of national integrated security strategies
- Strengthen SADC's engagement with civil society actors in the region
- Ensure that the regional early warning centre is fully operationalised and opened up to involve a broader base of stakeholders or establish an alternative, more inclusive information-sharing hub
- Prioritise the creation of the SADC Human Rights Commission, SADC Electoral Advisory Council (SEAC), Mediation Unit and the Disaster Management Unit

- Revisit and overhaul the role of SADC-PF at large, and its oversight on security issues in particular

For Botswana:

- Use constitutional reform to enhance separation of powers and through it strengthen the institutional autonomy of parliament to hold the executive accountable
- Strengthen and reform the parliamentary committee system
- Enhance SSG literacy among parliamentarians and civil society
- Enhance the capacity of the security sector, including the justice sector
- Keep track and address complaints about human rights abuse by security sector personnel

For the DRC:

- Develop an overarching SSR/governance programme
- Give attention to all institutions in the security sector in order to address capacity constraints, independence, human rights violations and their professionalisation
- Address regulation of private security
- Bring the intelligence institutions into SSR processes
- Pay special attention to weak oversight mechanisms
- Combat sexual violence, by both civilians and the armed forces, which is a matter of grave concern, with effective measures

For Lesotho:

- Enhance parliamentary and civil society oversight of the security sector, which is weak and needs to be capacitated
- Find effective means of overcoming capacity constraints in institutions such as justice, the Office of the Ombudsman, Child and Gender Protection Unit, and prisons. This should be addressed in a comprehensive SSR programme
- Pay special attention to the judiciary in terms of reform measures, and the shortage of skilled staff

- Establish measures to prevent the violation of basic rights of accused persons by the police and of convicts by correctional service officers

For Mozambique:

- Create an overall national security policy
- Formulate through an inclusive process a White Paper on policing and follow through with a police act
- Establish codes of conduct for all the security institutions
- Revise legislation governing prisons
- Resource security sector institutions adequately
- Introduce firm measures to deal with corruption in the security sector
- Establish a human rights commission, police complaints commission, security services commission and an ombudsman
- Capacitate civil society and the legislature to provide effective monitoring and oversight of the security sector
- In general provide the criminal justice system with an independent and educated judiciary, prosecutors and defence lawyers, well-trained and representative police and correction staff and an appropriate prison infrastructure

For South Africa:

- Develop a national security policy
- Revise the white papers on defence and intelligence
- Give consideration to an ombudsperson for the military
- Promote closer cooperation between departments in the criminal justice system because objectives and targets are not aligned
- Address tender rigging for private security companies
- Ensure that the Office of the Inspector-General is adequately staffed and resourced to fulfil its functions
- Address corruption and allegations of human rights abuses in the DCS
- Balance demands for stronger law enforcement with longer-term crime prevention strategies and respect for the rule of law
- Standardise the effectiveness of community police forums across the country because this varies considerably
- Address health issues and overcrowding in the prisons

- Devote attention to the massive growth of the private security sector

For Zimbabwe:

- Strengthen the constitutional and legal framework establishing and setting forth the mandate, governance, management, control and oversight of all sections of the security sector
- Establish a permanent secretariat for the NSC to ensure continuity, effectiveness and greater coordination with the executive, parliament and civil society
- Ensure that the intelligence agency is provided for in the law and that all security institutions are subject to democratic control and oversight
- Clarify the role of the executive in controlling the security sector and those of parliament, civil society and media in exercising oversight on the security sector, in line with international practice
- Enhance the mandate and capacities of the recently established Human Rights Commission and the Ombudsman to effectively carry out their respective mandate
- Clarify the role of non-statutory agencies such as the youth militia
- Enhance the knowledge and institutional capacities of relevant parliamentary committees and civil society to exercise effective oversight on the security sector
- Address the conditions within the prison sector

Overall:

- The general legal enunciation of civilian control, oversight and democratic norms and standards for the governance of the security sector is adequate, but its implementation is tenuous owing to weak institutions, human and financial constraints, party partisanship and political interference
- There is scope for review of the policy and legislative frameworks with an aim to align these to current international and regional standards and national realities
- There is general lack of coherent integrated national and regional security strategies that enable efficient utilisation of resources and alignment between national and regional priorities and approaches

- Parliamentary oversight is impeded by a lack of knowledge of the functioning of the security sector and their specific duties in relation to it
- Members of civil society, except for think-tanks that specifically work on peace and security issues, are not meaningfully engaged in the discourse on security, nationally and regionally, and in the monitoring of national security institutions. They have largely been excluded by states and SADC, except in the case of South Africa, and they are ill equipped to meaningfully execute this function
- In general security institutions appear to be under-resourced, face skills shortages and are challenged to deliver security services. The extent of these shortages is difficult to evaluate, given the continued secrecy and lack of transparency in this sector
- Policing and correctional services require significant investment in training and in the development of a rights respecting culture
- The independence of the judiciary in many of these countries is compromised. The judiciary suffers from lack of capacity that results in severe backlogs in the administration of justice
- Labour relations in the security sector constitutes an increasingly contested arena. More attention must be given to the management of human resources in terms of grievance procedures and mechanisms, recruitment and retention strategies and remuneration packages
- Poorly conceptualised and implemented DDR processes have had long-term effects in the region: incomplete DDR processes present threats of continued circulation of weapons, criminal activity and potential for remobilisation; ill-conceived reintegration programmes have left many ex-combatants vulnerable and open to criminal and political exploitation; the lack of coherent policy and institutional frameworks catering to the needs of war veterans raises them up as a potential threat
- SADC should develop a set of guidelines for the democratic governance of the security sector and take the lead in developing civic education programmes that address the relationship between civil authority and civil society and the security services
- Border management and disaster management are areas that require both national and regional prioritisation and coordination

Collectively these challenges and recommendations speak to the need for a more human security-centred sector that is able to increase its legitimacy and

to shift the perception of security officials from predators and human rights violators to service providers. To do this there must be investment in the training of personnel and in the resources provided to these institutions. Moreover, without ensuring capable and engaged oversight mechanisms, the ills that currently beset the sector will not be effectively addressed. Democratic governance of the security sector is point of departure for enhancing security in the region and must be actively encouraged in all the countries. The SADC Organ must play a key role in ensuring SSG in the region.

Notes

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- 40 Saki Mpanyane highlights these points in relation to the Pan African Parliament in *Transformation of the Pan-African Parliament: A path to a legislative body?* ISS Occasional Paper 181, Pretoria: ISS, March 2009.
- 41 Article 16A states that civil society is one of the key stakeholders that participate in SADC national committees, while Article 23 states that SADC shall cooperate with, and support the initiatives of the peoples of the region and key stakeholders, contributing to the objectives of this treaty in the areas of cooperation in order to foster closer relations among the communities, associations and people of the region. For the purposes of this article, key stakeholders include private sector; civil society; non-governmental organisations; and workers' and employers' organisations.
- 42 Article 4 of the protocol states that SADC shall 'promote civil military relations through, for example, strengthening the ethics, professionalism and accountability of the security forces, encouraging civil society participation in conflict management, through seminars, research and public debate'.
- 43 Interview with the executive director of SADC-CNGO, February 2010.
- 44 See paper by B Dithlake on 'Transformation of SADC', presented at the 5th Annual Civil Society Forum in Kinshasa, 2009, as well as another paper by C Hendricks on 'Politics of human security', presented at the same forum.
- 45 Interview with SADC Organ staff, August 2009.
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- 48 President Khama, November 2009, <http://prgobw.blogspot.com/2009/09/opening-remarks-by-helt-gen-seretse.html>, accessed 13 July 2010.
- 49 The factions are Barata Party, represented by the party chairman, Daniel Kwelagobe and the A-Team led by Jacob Nkate and enjoying the sympathies of the president.
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- 57 Botswana Defence Force Act, CAP21:05, Gaborone: Government Printer.
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- 70 Botswana Penal Code. Section 13, Gaborone: Government Printer.
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- 72 *Ibid*, Section 26.
- 73 *Ibid*, Section 28.
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- 75 Dan Henk, Botswana Defence Force, *African Security Review* 13(4) (2004).
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 - Supporting cross-government coordination, accountability and internal oversight of security sector institutions
 - Supporting government capacity to monitor and evaluate service delivery in the security and justice sector. To include work with the SSAPR M&E team to design and implement a government-led and owned baseline survey
 - Improving financial accountability through increasing efficiency, effectiveness and transparency of the budget and its expenditure

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Cette monographie est une étude portant sur le secteur de sécurité dans six pays d'Afrique australe, à savoir le Botswana, la République Démocratique du Congo, le Lesotho, le Mozambique, l'Afrique du Sud et le Zimbabwe. Elle fait le point sur les forces et les faiblesses des diverses institutions formant le secteur de sécurité à savoir la défense, la police, les prisons, les renseignements, la sécurité privée, les agences de surveillance de même que les cadres politiques et légaux qui les régissent. La monographie constitue une tentative de fournir des données de base sur les institutions de sécurité de la région afin de nous permettre de mieux déterminer les domaines dans lesquels la réforme est nécessaire. Une harmonisation des institutions de sécurité nationale au niveau régional en renforcera le fonctionnement. Par conséquent, la monographie commencera par un passage en revue des organes de coopération en matière de politique, de défense et de sécurité de la zone SADC.

This monograph is a study of the security sector in six Southern African countries, namely Botswana, the Democratic Republic of Congo, Lesotho, Mozambique, South Africa and Zimbabwe. It highlights the strengths and challenges of the various institutions that make up the security sector, including defence, police, prisons, intelligence, private security, oversight bodies and the policy and legal frameworks under which they operate. The monograph represents an attempt to provide baseline data on the security institutions in the region so that we can better determine where security sector reform measures are needed. The functioning of national security institutions is enhanced by their harmonization at a regional level. The monograph therefore begins with an overview of SADC's Organ of Politics, Defence and Security Cooperation.

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