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**Third-Party Intervention in the Mbindia Enthronement
Conflict: Containment or Transformation?**

**Women and Peace-building in the Democratic Republic
of the Congo: An assessment of their role in
the Inter-Congolese Dialogue**

**Nationalist-Military Alliance and the
Fate of Democracy in Zimbabwe**

**An Analysis of the Problems of the Labour Dispute
Resolution System in South Africa**



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All references must be included.

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Foreword

Jannie Malan

As we were preparing the material for this issue, important aspects of our human reality seemed to present themselves for more intense attention, further meditation and appropriate action. The three that struck me most, are *diversity*, *commonality* and *co-operation*.

Diversity could already be noticed in the geographical contexts of the articles and book reviews. The articles are about Cameroon, the Democratic Republic of the Congo, Zimbabwe and South Africa. The book reviews are about Africa, Israel-Palestine and South Africa. A diverse variety of human groups are dealt with – followers and chiefs, women and men, youths and politicians, employees and employers, children and warlords, politicians and people of different religious and cultural convictions. Different approaches to conflict are discussed:

Promoting transformative mediation in which parties are empowered to resolve their conflict themselves, and in which they are guided towards recognising and understanding the concerns of each other

Including women in conflict-resolving talks and decision-making mechanisms, and empowering them to fulfil their gender-assertive responsibilities

Propagating pro-democracy elements, especially in situations where democracy is ruled out by an unassailable, ethnicised and militarised government

Developing and making better use of internal mechanisms for dealing with labour disputes, and building the capacity of parties to explore alternatives and utilise them in less adversarial ways

Addressing the structural conditions that facilitate the militarising of Africa's children and youth, and accommodating the potentially constructive contributions of activism-minded youth

Propagating integrity among political and religious leaders.

These accounts do present us with various kinds of conflict among various groups of people and various ways of dealing with the conflicts. If, however, we read these contributions in receptive and meditative ways, we can also experience strong feelings of *commonality*. The settings and situations may differ from our own, but all of us are probably from contexts where similar or comparable problems and conflicts have to be dealt with. Few places, if any, are exempt from challenges with regard to:

gender equity and gender assertiveness,

transparency and integrity when people are appointed to jobs or dismissed from jobs, and

responses and reactions from children, youths and adults to selfish and stubborn political leaders or groups.

It is possible, therefore, that implied or specifically stated recommendations from far-away places may prove to be very appropriate where each of us happens to be co-existing with fellow-humans around us.

In addition to thoughts about diversity and commonality derived from the

written material, we as editing team also had the advantage of experiencing these aspects in our own midst. Earlier in this year, our editorial team has enjoyed the privilege of doubling its size and becoming international.

Richard Kamidza, a Zimbabwean citizen, has joined ACCORD as another senior researcher and as Managing Editor of this journal. His research is focused on conflict transformation in Africa, particularly West and North Africa. With his B.Sc. Hons. in Economics and M.A. in Policy Studies, and his experience of working in regional organisations, he is well equipped to provide policy analysis and proposals for strategic responses and appropriate interventions. He has done consultancy work for various organisations in Zimbabwe and beyond. His last post before joining ACCORD was that of Programmes Co-ordinator, Senior Policy Analyst and Research Fellow at the Southern and Eastern African Trade, Information and Negotiations Institute (SEATINI). He has written research papers, policy articles and book chapters, and has presented papers at various national, regional and international conferences.

Tor Sellström, a Swedish citizen, has joined ACCORD as Senior Advisor. Besides serving on the Editorial Board of this journal, he is co-ordinating the Research Unit and working with the Director's Office in several important projects. He has studied at the Universities of Stockholm, Barcelona and Paris, and has for more than twenty years worked in six Southern African countries. As Planning Economist with the Swedish International Development Authority (SIDA), he co-ordinated support to the Liberation Movements in Zimbabwe, Namibia and South Africa. He later worked in senior research posts at the Namibian Economic Policy Research Unit in Windhoek and the Nordic Africa Institute in Uppsala. At this Institute he co-ordinated a project on the role of the Nordic countries in the national liberation in Southern Africa. For the last three years he has been Counsellor (Economist) for development co-operation at the Embassy of Sweden in Pretoria. His publications include books, chapters and articles on international development assistance and on regional co-operation and public administration in Southern Africa.

More details about these new members of our editorial team, as well as their pictures, may be found in the staff section of ACCORD's website (www.accord.org.za). What can also be seen in this website section is that although the editorial team is not gender-balanced, the four new senior

researchers are. Moreover, the technical assistance and the design and layout of the journal are done by women – Karabo Rajuili and Angela Thomas.

So, in our editorial work, we indeed have the benefits of a valuable diversity of backgrounds, perspectives, talents and skills. And as we contribute our assessments, analyses, insights and suggestions, we experience the thrill of our commonality. Precisely this interrelatedness of diversity and commonality inspires us to a kind of co-operation that is very meaningful – and very pleasant.

This is the third aspect I have mentioned at the beginning: the inter-human possibility of cordially *co-operating* with each other. We trust that the material in this issue contains enough that may stimulate readers to maintain and enhance the quality of their co-operation with others. We are so different, but we are also so similar! We are joined together by so many factors. And so many people around us, as truly human as each of us, may be ready to co-operate, or may be waiting for some of us to co-operate to bring about much-needed changes.

Third-Party Intervention in the Mbindia Enthronement Conflict: Containment or Transformation?

*Fonkem Achankeng I**

Abstract

The intervention of a third party in the conflict around the appointing of a local Chief is analysed. Traditions for selecting and installing a successor to a Chief who had passed away were in place and were followed by the local community concerned. The ruler of the Administrative District, however, used all his power to control the selection and enthronement of the new Chief. The Government intervened as a 'neutral' party (under armed protection!) in the ensuing conflict. 'Problem-solving' mediation was used, but the actual objective

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was to contain the conflict as soon as possible and restore 'peace' and 'order'. The interests and emotions of the local party were not listened to, and an outcome was imposed that left the people of Mbindia totally dissatisfied. A year after the conflict, the perceptions and feelings of the people on both sides were explored by means of interviews.

The contrast between the paradigms of individualistic containment and relational transformation is discussed. Views on what a successful outcome should be are given. Special emphasis is placed on transformative mediation in which parties are empowered to resolve their conflict themselves, and in which they are guided towards recognising and understanding the concerns of each other. It is such an approach that can lead to an outcome that satisfies all the parties, provides a lasting solution and preserves community relationships.

Introduction

Anthropologist Davidheiser (2004) states pointedly that the full range of outcomes that can be produced by mediation highlights challenges that should be considered by scholars, practitioners, and policy-makers. Using the perspectives of Bush and Folger (1996) as a critical foundation, I analyse the mediation process employed in the Mbindia enthronement conflict,¹ link the process to the outcome, and conclude with some implications for research and practice. I focus on the outcome of the process and argue that the problem-solving ideology used by the mediators may have been the cause of the partial dissatisfaction of the party that continues to consider the conflict as unresolved. The problem-solving approach to mediation is linked, in this paper, to conflict containment ideology especially in social contexts where third-party intervention may have hidden agendas that

1 This conflict arose when Fuantem, the ruler of Lebang, a location in Cameroon, arrogated to himself the exclusive right to preside at the public enthronement of a new Chief in Mbindia on March 11, 1999, a right which the people of Mbindia refused on the basis of history and blood relationships.

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drive the intervener(s) not to recognise the emotions of one or all the parties in a conflict situation.

The critical questions in this paper are: What should determine an intervention? Whose outcome (disputant or mediator) does the intervener seek to achieve? Should a mediation process have a set agenda on the direction of the mediation? I address these questions in the light of the 1999 Mbindia enthronement conflict that I witnessed evolve and escalate almost to the point of a violent confrontation. Third-party intervention was arranged and the mediation resulted in an outcome that left one party feeling satisfied and the other party feeling dissatisfied. My inspiration comes from Folger's (2004) transformative framework² which considers mediation as 'empowering the parties to resolve conflict themselves'. This framework, as Folger (2004) puts it, helps disputing parties experience strengthened awareness of their own self-worth and their own ability to deal with whatever difficulties they face.

This paper also focuses on the outcome of the mediation by Government agents who intervened to contain the crisis that followed the Mbindia enthronement conflict. The paper argues that the outcome of the intervention was less successful because of the intervention approach and containment ideology, which had an influence on the mediation process used by the administrative officers who played the third-party role in the conflict. In critiquing the conflict containment ideological approach of the mediation process, a situation described by Louis Kriesberg (2002) as imposed outcomes, I make a claim for the conflict transformation approach to help the parties address their differences (Folger 2004). To fully appreciate the analysis, it may be useful to understand what a successful outcome means in mediation and what the Mbindia enthronement conflict was about.

2 A lecture entitled, 'Mediation: The Transformative Framework' delivered on October 18, 2004 at the Department of Conflict Analysis and Resolution, Nova Southeastern University, was based on the framework in Bush and Folger 1994 (*The Promise of Mediation: Responding to Conflict through Empowerment and Recognition*).

Successful Outcomes in Mediation

Many scholars in conflict studies have been interested in intervention outcomes (Brett 1986, Lind & Tyler 1988, Brett, Goldberg & Ury 1990, Moore 2003). According to Brett, Goldberg and Ury, satisfaction with outcomes depends primarily on the degree to which the outcomes of the dispute meet the parties' interests – their needs, desires, concerns – and secondarily on whether the parties believe the dispute resolution process is fair. Similarly, Brett (1986) and Lind and Tyler (1988) consider procedures that allow disputing parties to vent their emotions, voice their concerns, and participate in determining the final decision as providing fairer outcomes than those situations where one or both parties are involved less. Successful outcomes are those outcomes of mediation that Moore (2003:107) describes as compromise outcomes or win-win outcomes. Compromise outcomes occur when parties to a dispute give up some of their goals to obtain others, and win-win outcomes occur when the parties feel that their interests have been satisfied. When one of the parties feels dissatisfied, a future positive relationship is not possible and, consequently, the mediation cannot be considered successful.

In relating intervention procedures to the nature of conflict outcomes, Brett, Goldberg and Ury (1990:164) also discuss two major concerns that should be of interest to practitioners and researchers alike. The first major concern is that 'the outcomes of disputes and the procedures that generate those outcomes may not only affect the parties' ability to resolve future disputes but also their ability to work together day to day'. The second hint is that there is the possibility that unresolved conflicts can recur in any of three forms – 'same dispute, same parties; different dispute, same parties; same dispute, different parties.' It will be interesting for research purposes to monitor developments in the relationship between Mbindia and Azi after the 2003 intervention.

For compromise outcomes to occur, Moore (2003:107) provides a number of conditions. Two of these conditions relevant to the case under study are: (a) neither party has the power necessary to win totally, (b) the parties have some leeway for cooperation, bargaining, and trade-offs (Moore 1982). In the Mbindia enthronement conflict of 1999, one party had the power necessary

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to win totally and would not be ready to negotiate. That party's power apparently came from his recognition as ruler of Lebang and member of the Central Committee of the ruling party in the country. In regard to win-win outcomes, Moore (2003) also presents six conditions, two of which are very relevant to this analysis: (1) the fact that both parties are not engaged in a power struggle, (2) the fact that the parties are free to cooperate and to engage in joint problem solving (Moore 1982).

In the case under study, the parties did not appear to be free to cooperate and to engage in joint problem solving. First, the parties to the conflict did not choose the mediators. Second, the mediation did not take place at a neutral location, which may in this case have been the *Prefet's* office. Third, neither party was involved in determining the timing of the process. Fourth, the party with more power, Fuanthem of Lebang, did not think it was necessary to cooperate with Fuambindia, the other party in the conflict. The conflict being mainly a struggle over issues of power and control in which Fuanthem considered that he had the power to exclusively control all the decisions relating to the enthronement rites at Mbindia probably made him not view the situation as one in which there was the need to negotiate a settlement with the other party. In this circumstance, getting to a collaborative outcome may have needed more than just a problem-solving approach, and definitely needed the avoiding of any approach with a containment ideology. I can even assert that any approach with a containment ideology had to be avoided in any intervention that was aimed at ensuring continued harmony in that community. A skilled mediator would therefore have gone to great lengths to see how far he or she could transform the circumstances around the issues in conflict to enable the parties to gain greater understanding of each other's positions.

The mediators in the Mbindia enthronement conflict were more concerned about containing the situation in order to achieve peace and order in the area rather than trying to get the parties to the conflict to understand each other better and to work toward a collaborative result. After considering successful outcomes in mediation, and their relationship to the conflict under study, this analysis will turn to the Mbindia enthronement conflict, and attempt an evaluation of the success or failure of the process.

The Mbindia Enthronement Conflict

Mbindia is a village in Cameroon, Africa. It is located in *Lebang* in the Lebialem Administrative Division of Cameroon.³ Lebialem Administrative Division is made up of two ethnic groups, the *Nweh* and *Mundani* peoples. *Lebang* is part of the *Nweh* ethnic community and the people of *Nweh* are mainly an immigrant population from other ethnic groups in Cameroon. As many other African villages, Mbindia is ruled by a Chief. Fuambindia Mbeache, who ruled Mbindia from about 1941, passed away in December 1998. According to the traditions of the people, the death of Chief Fuambindia was not made public until March 2000 when a new Chief would be crowned and enthroned. In March, a major conflict arose over the enthronement ceremony.

The ruler of Lebang claimed the exclusive right to control every aspect of the enthronement ceremony. Having exclusive control of the enthronement rites meant that the living Will of the deceased Chief had to be given to Fuantem, and that he would also seize⁴ the new Chief in public during the enthronement ceremony. The kingmakers of Mbindia refused to concede the control of the entire event to the ruler of Lebang. They argued that though Mbindia is located in a place that became known as Lebang, the Mbindia people and their ruler did not have any blood relationships with the ruling family of Lebang. They also argued that, as had been the tradition, no ruler of Mbindia had been seized in public by any ruler of Lebang. The kingmakers of Mbindia would also not hand the Will of the deceased Chief to the ruler of Lebang because their Chief neither

3 Cameroon is divided into ten Provinces, each headed by an appointed Governor. Each Province is divided into Divisions, and each Division is headed by an Administrator known in French as *Prefet*. Lebialem is one of the 58 Divisions of Cameroon and Mbindia, Lebang and Azi are locations in one of the subdivisions of Lebialem Division.

4 This term was first used by Robert Brain in his book *The Bangwa Funerary Sculptor* in which he describes the funeral of a dead Chief and the process of enthroning a new one. All the princes assemble in the main court of the palace and masked kingmakers pick out the next king from among the princes.

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handed a copy of his Will to the ruler of Lebang nor asked them to do so. The final argument they advanced in the matter was based on Nweh customs and traditions, where only a father can announce the death of a child, and preside at the child's funeral. In other words, the prerogative to make such an announcement depends mainly on blood relationships.

When the kingmakers of Mbindia made it clear to the ruler of Lebang that he did not have exclusive right to preside at the enthronement of their Chief, the ruler of Lebang decided to use all his power as ruler of Lebang, and his political clout in the area⁵ to impose his will on the people of Mbindia. On the strength of his political clout, the first thing he did was to obtain a banning order from the civil administrative authorities to stop the enthronement ceremony. The people of Mbindia defied the banning order and went ahead to organise the enthronement of their Chief, Fuambindia Lekeufua II. After the new Chief of Mbindia was successfully crowned and enthroned by the kingmakers of Mbindia, a number of offensives and counter-offensives began between the people of Mbindia and the people who supported the hegemony of the ruler of Lebang. The latter are mainly resident at or around Azi, the seat of the Lebang ruling dynasty. The dispute brought about so much controversy and bitterness between the parties that there was risk at one point of an atrocious war. The show of power that ensued culminated in a war plan by the ruler of Lebang to exterminate Mbindia.⁶

As the situation began to snowball out of control, the government of Cameroon intervened as a 'neutral' third party, using its administrative officers stationed in Lebialem Division. Government intervention to find a settlement to the conflict took place a number of times. Each time that government officials

5 Fuantem of Lebang was also member of the Central Committee of the Cameroon Peoples Democratic Movement (CPDM), the ruling party in the country.

6 Muluh Alfred Mulutakwi was the Government-appointed Administrator (*Prefet*) of Lebialem. In the wake of the conflict, this administrator issued a Prefectoral Order to warn Fuantem and the people of Azi of the consequences of their potential action when he received reports that Fuantem was holding a series of meetings to work out plans to invade Mbindia in order to reinforce his hegemony in the area.

Fonkem Achankeng I

intervened in the conflict, the government officials playing mediator roles were always accompanied by armed police officers or *gendarmes*. In the summer of 2003, there was an outcome that was perceived differently by the parties. While the interveners and the ruler of Lebang and his supporters perceived the mediation outcome as fair and 'successful', the people of Mbindia viewed the outcome as unfair and 'unsuccessful'.

The investigator witnessed the conflict unfold. An original native of Lebialem in Cameroon, the investigator lived through the Mbindia enthronement conflict. The investigator was personally interested in every development because the conflict evolved around issues of authority and control in the traditional society governance in the area. On the other hand, I was also interested in following the developments relating to the issue of 'seizing the successor' to a kingship throne in Lebialem at a public enthronement ceremony which had become a major source of disagreement and conflict in the area. As an issue of power, the problem was mainly about who has control over whom. In the summer of 2004, I got the general information that calm had returned to the area and that the people of Mbindia were moving about freely because the matter had been resolved in August 2003. I was informed of how the administrative officers in the area had mediated a settlement and how everyone was consequently living in peace.

One year after the settlement was said to have taken place, I decided to find out how people in the area felt about the settlement. My intention was to determine the success of the mediation method used by the local administration. I interviewed 17 people selected at random from both sides in the conflict. The responses I got revealed three sets of opinions emanating from three groups of people: (1) people who were knowledgeable about the conflict, but were not directly involved in it; (2) people who appeared to be supporters of the Azi side in the conflict; (3) Mbindia people including their Chief, Fuambindia Lekeufua II.

From the interviews conducted in the summer of 2004, the findings were that the perceptions of the intervention and its outcome were different. Supporters of the ruler of the Azi dynasty were somehow happy to inform the investigator that the conflict had been resolved with the intervention of the administrative officers. Many of the people who were not directly involved in the conflict also thought that the matter had been settled by the administration.

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The third group of interviewees, the people of Mbindia including their Chief, told the investigator that the matter had not been resolved. They affirmed that tensions had subsided, but that the conflict was far from resolved. They pointed to the persistent bad state of relations between themselves and the Azi side as an indicator of their dissatisfaction with the mediation process initiated and led by government officials.

Although the people in the third group felt happy that the tension had died down, they also felt dissatisfied with the outcome of the intervention. When I asked the Chief, Fuambindia Lekeufua II, why he felt dissatisfied with the outcome of the mediation, the Chief stated that he had simply been cornered, coerced, and tricked, and that an important sign that the problem was yet to be resolved was that the relationship between his people and the other side was just as bad as it was in 2000.

The different perceptions of the nature of the mediation outcome in the conflict motivated me to want to explore and analyse the mediation process in the Mbindia enthronement conflict from the perspective of mediation ideologies and how they may affect mediation outcomes. My assumption was that when the parties to a settlement leave a mediation process considering the outcome differently, it means the conflict has not been successfully resolved. In the Mbindia enthronement case, it seemed evident that the mediators had an agenda to contain the conflict in order to ensure the return of peace and order in their administrative unit rather than help the parties involved to 'experience a strengthened awareness of their own self-worth and their ability to deal with their differences' (Folger 2004).

Although the issues of power were fundamental in the conflict, the concept of power was not the main focus of my analysis. The focus was rather on the outcome of the mediation process involved. The argument is that the peace-and-order-oriented agenda or containment outcome that was imposed in a problem-solving 'wrapping' used by the mediators may have been the major factor in the dissatisfaction of the party that continued to consider the conflict as unresolved.

As mentioned earlier, the Government of Cameroon, through its administrative officer in the region, intervened in the conflict a number of times to mediate a settlement between Azi and Mbindia. In the summer of 2003, there

was an outcome which was described differently as ‘successful’ by one party and the mediators, and as ‘unsuccessful’ by the other party.

Table 1: Issues and considerations in the Mbindia enthronement conflict

Issue	Enthronement of the Chief of Mbindia	Enthronement of the Chief of Mbindia
Disputing Parties	The People of Mbindia	Fuantem of Lebang
Issues in dispute	Party would not hand living Will of Fuambindia Mbeacha I to Fuantem and insisted that Fuantem cannot publicly ‘seize’ their Chief in public ceremony because they have no blood relationship with the Fuantem dynasty	Party considered it his exclusive right to be given the living Will and to publicly ‘seize’ the successor to the throne of Mbindia
Mediator(s)	Government official not chosen by party	Government official not chosen by party but worked in collaboration with party
Mediation location	Considered imposed	Azi Palace of Fuantem
Perception of outcome	Unsuccessful	Successful
Considerations	Mediator(s), mediation and location of mediation not considered neutral	Mediator(s) considered as partner in the effort to instil peace and order

Some Theoretical Considerations

In this section of the paper, I highlight the transformative paradigm of mediation in which Bush and Folger (1996) and Lederach (1995) aim to

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empower disputants by allowing them to take charge of the resolution process and focus the discussion on two aspects of mediation theory. These are mediation determinants and the outcome critique of mediation. But first, let us consider the transformative approach to mediation.

The Transformative Framework of Mediation

In a lecture entitled, 'The Transformative Framework: Purpose Driving Practice', J.P. Folger (2004) asserts that third-parties co-create conflict interaction with the parties to a dispute, and that the discourse of mediation practice is driven by different ideologies, namely, the individualistic ideology (social separation and containment), organic ideology (social community and conflict containment), and the relational ideology which emphasises social connection and conflict transformation. In this connection, Folger (2004) also contends that the purpose of a third party drives the practice of that third party because, as he argues, the moves and interventions by mediators are never ideologically neutral.

From this standpoint, Folger (2004) views mediation not as a process to solve a problem, nor a relationship to be restored, but rather as helping the parties to 'experience a strengthened awareness of their own self-worth and their own ability to deal with whatever difficulties they face regardless of external constraints'. In explaining the transformative approach to mediation, Bush and Folger (1994:20) state that 'The unique promise of mediation lies in its capacity to transform the character of both individual disputants and society as a whole'. Bush and Folger (1996) envision that this approach to mediation focuses on empowerment and recognition of the parties who have 'value and strength and their own capacity to handle life's problems'. These authors consider the transformative approach as incorporating the ability to empower the individual disputant with self-respect and confidence. It also allows the disputants to 'humanise' themselves, thus recognising the legitimacy of each other's concerns. For Bush & Folger (1994:201), therefore, 'The value of the transformative approach is that it helps parties change and experience new modes of behavior and interaction; and these changes and new behaviors can occur, and continue, whether or not an agreement is reached in any given session'. The idea is that because the process is informative and educational, inner change within the

individual disputant can be very beneficial to the disputing individuals when they deal with conflict in the long term.

Mediation Determinants

In their discussion of the determinants of mediation, Wall, Stark and Standifer (2001) observe that two processes must mesh for mediation to occur. First, the interacting or disputing parties must request or permit a third party to mediate; second, the third party must agree to mediate. The literature on the practices in different nations and societies indicates that two factors, norms and expected benefits, shape these two interdependent processes. Some of these norms are frequently imbedded in the culture while disputants also seek third-party intervention or assistance because they expect that this assistance will produce various benefits. To evaluate the benefits of third-party assistance, the disputants often compare the outcomes of the mediated interaction with those of the alternative (Wall et al 2001). Silver (1996), for example, states that disputants might realise that the mediator possesses some expertise on the problem and seeks to use his or her expertise.

Other scholars have examined mediation determinants from the perspectives of different cultures. Working particularly with some oriental cultures, these scholars agree that norms serve as a powerful force motivating disputants to seek assistance from third parties, as in China (Chan 1998), Korea (Cho & Park 1996), Japan (Callister & Wall 1997), Malaysia (Mansor 1998), and Turkey (Kozan & Ergin 1998). Tuso (1998) also has the same consideration of many traditional African societies. An explanation for this action is that the disputants in these cultures have repeatedly observed disagreements being handled by third parties, and they know that their societies sanction this approach (Ohbuchi 1998).

In many repressive cultures and situations, mediation can be imposed on the parties and particularly on the weaker party as a means of enhancing the agenda of the powerful. In such situations, the consent and cooperation of the weaker parties are usually not sought, or as Bush and Folger (1996) put it, the 'value and strength and the capacity' of the parties, and particularly the weaker party are not considered and acknowledged. The Anglo-Irish agreement of 1986, the London Conference of 1959 on the independence of Cyprus (Loizos 1976, Ertekun 1981,

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Ryan 1990), and the Two Alternatives imposed on Southern Cameroons by the United Nations (Awason 2000) are some cases in point.

The Mbindia enthronement conflict in Cameroon is one of these situations where mediation may be used to promote the agenda of the powerful. In Cameroon Republic, the situation has arisen where an elite class, known in the governance culture as *Prefets*, intervenes in conflicts for purposes of ensuring what such officials refer to as 'peace and order'. In the governance system inherited from French colonial traditions, a group of civil servants serves the Central Administration as administrators and are placed in all administrative units of the country. Known in the country as *Prefets*, these administrators are graduates of a School of Public Administration known by its French acronym as 'ENAM' (*École National d'Administration et de Magistrature*).

From independence in 1960, Cameroon Republic has mainly been a one-party dictatorship. Public administrators such as Governors and *Prefets* are appointed by Presidential Decree and posted to work in different regions or provinces, administrative divisions and districts. Each administrative official, as representative of the Head of State in the locality of deployment, serves as the echo chamber of the Head of State's policy of peace and order in the locality. Part of the duties of these administrative officials is to intervene in conflicts, not necessarily to help disputants negotiate a settlement to their conflict, but rather to advance the government's policy of peace and order. In other words, such mediation is not always about 'transforming the character of both individual disputants and society as a whole' (Bush & Folger 1994:20) by empowering conflict parties with 'self-respect and confidence' or 'recognizing the legitimacy of each other's concerns'. It is in this context that administrative mediation in Cameroon can be considered as ideology-driven.

In such situations where third parties do not seek to 'co-create conflict interaction with the parties to a dispute', the ideology-driven mediation may tend to impose or direct settlement. It may be recalled that imposed mediation outcomes are generally not durable. In such cases the conflict is merely contained. When a conflict is merely contained, the situation of a seeming peace which results is described by Galtung (1996) generally as 'negative peace', and where peace is negative, the conflict is likely to re-emerge. There are many instances where conflict has persisted or remained intractable after intervention because

third-party interveners tended to decide what the conflict was and to direct settlement terms. Some examples that support this viewpoint are the conflicts between the Greeks and Turkish Cypriots in Cyprus, the Catholics and Protestants in Northern Ireland, the Southern Cameroons Question in Cameroon, and, in this case study, the Mbindia enthronement conflict. Some of these cases that play out in conflicts, both at the international and local levels, reinforce the argument advanced by Bush and Folger (1994:59) that using notional desired outcomes and selective facilitation, mediators can impact the outcome of the process which is supposed to be therapeutic in the problem-solving perspective.

Administrative or ideology-driven mediation in Cameroon has a history in the governance policy of the country. A form of mediation has been used in the country as an administrative tool to enhance government policy of 'peace and order'. In this context, the concepts of peace and order are not premised on the presence of justice, or the freedom for people to seek third-party help in their own interest, or to seek justice through the methods of their choice. Instead, concepts of peace and order are used as weapons to contain the people and maintain a grip on them in such a way that the people do not complain or agitate. Day-Vines et al (1996) and Tabish and Orell (1996) have worked on this type of mediation that is mediator-focused and used to maintain peace and decrease violence in schools. In the cases reported in their research, as in Cameroon, the mediator simply brings some form of pressure to bear on some of the parties. Wall, Stark and Standifer (2001:376) describe the technique of pressing as involving some kind of threat on a party. In my view, this method of third-party intervention is containing a conflict rather than seeking to resolve it. The government of Cameroon has intervened in a number of cases using this method. The succession conflict over the Mokunda throne of the Endeleys in Buea⁷ in 1988 and the Mbindia crisis of 1999 are two cases in point.

In other words, motivations for third parties to mediate and disputing parties to seek assistance can be determined not only by norms and law and the

7 Buea is a location in Cameroon. There was a succession conflict in Buea in 1982 following the death of Chief Gervasius Endeley. The Government of Cameroon intervened through its administrative officers.

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expected payoffs from mediation, but they can also be imposed on the parties. This summary raises the question of mediation outcomes.

The Outcome Perspective in Mediation

In their work on the development of mediation, Wall, Stark and Standifer (2001:383) observe that in previous decades, scholars have focused principally on factors that intervene in mediation's effects on the aggregate outcome, that is, the settlement of the dispute, ignoring somewhat the effects on outcomes accruing to the various parties. The principal focus in this paper is different. The focus is rather on the outcome of mediation for the disputants. This position corresponds to the current work on mediation outcomes to the parties and the mediators (Wall et al 2001:384). For example, Shemberg (1997) reports that external pressure greatly affects disputants' outcomes. When one side is forced to participate in the mediation, its power is reduced, and so are the payoffs. Although forced participation will not reduce the settlement rate (Brett, Barsness & Golberg 1996), it will reduce the forced disputant's satisfaction, especially if the forced disputant is already weaker than the opposing disputant (Grillo 1991).

This scenario presents a picture of the process and the outcome of the mediation that took place in the Mbindia enthronement conflict (1999-2003). From our knowledge of the conflict and its evolution, it was evident that the people of Mbindia and their Chief were under some form of pressure to participate in the mediation. It would also appear that the interveners worked closely with the party with more power to impose a settlement, hence the dissatisfaction of one party.

Of the three mediation outcomes presented in mediation theory, namely the outcomes of mediation accruing to the disputants, the mediator, and other third parties (Wall et al 2001), the concern in this article is mainly on outcomes that accrue to the disputants. This study looks at the outcome of the administrative-driven mediation in the Mbindia enthronement conflict. The argument all along is that the outcome reflected the peace-and-order or containment ideology that determined the intervention process in the Mbindia-Azi conflict. It was, in other words, an imposed outcome in the sense intended by Kriesberg (2002:566) who has observed that some conflict outcomes are unilaterally imposed by one side, as happened after World War II.

When the investigator spoke to people in the area about how they viewed the intervention process, the people of Mbindia, for example, said that ‘pressure had been brought to bear on them by the administrative authorities who came to the process not to hear both sides of the issues in conflict but to intimidate them into accepting a settlement’. From this standpoint, we may conclude that the third-party intervention in this conflict sought an outcome accruing mainly to the mediator. This mediation agenda was reinforced in this conflict by the third-party interveners coming to the process with armed *gendarmierie* officers to possibly make the parties, and particularly the weaker party, understand that it was necessary to comply with the outcome.

Conclusion

In this paper, I described the Mbindia enthronement conflict and the outcome of the administrative-driven or enforced mediation process, and focused on the various perceptions of ‘success’ by the parties and the mediators. Referring to the transformative paradigm of mediation in which Bush and Folger (1996), and Lederach (1995) aim to empower disputants by allowing them to take charge of the resolution process, I examined the mediation process employed in the conflict. I argued that the mediation and its outcome were imposed on the weaker party, and that such an approach is not likely to produce a lasting outcome, given that the satisfaction of the interests of the disputants did not depend on their mutual cooperation in the mediation process. In this context, I promote a claim for transformative mediation, given that the problem-solving approach, and especially one with a containment agenda as in the Mbindia enthronement conflict, may much too often serve the interests of third-party interveners. In repressive situations needing conflict containment, third-party intervention mainly serves the interests of the interveners rather than provide the opportunity for parties to work collaboratively to resolve their conflict.

In this regard, Bush and Folger (1994:59) make the pertinent observation that the experiences of mediators can predispose them to actively look for an outcome by understanding and diagnosing a particular problem rather than

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letting it unfold. From the experience of the Mbindia enthronement conflict and the developments in the conflict following the intervention discussed in this paper, there are possibilities that the issues in the conflict will re-appear in future. In this connection, approaches that seek mainly to problem-solve by containing a conflict are not likely to produce durable outcomes in conflict situations.

As a traditional system, a better approach in the Mbindia enthronement conflict would be one which preserves community relationships rather than just an outcome which meets the needs of the party with more power or the concept of peace and order as construed by the government of Cameroon acting through its administrative officers. To achieve the relationship goal, third-party intervention should be animated by a collaborative and relational ideology which supports interaction between the parties and changes the quality of their interaction. If one party remains dissatisfied with the intervention and its outcome, it means the intervener(s) probably saw the conflict as a problem to be contained rather than as an opportunity to help the parties to collaboratively expand their perspective to include an appreciation for the situation of the other party.

A peculiar element in the intervention ideology and process in the Mbindia enthronement conflict in Cameroon was the presence and use of armed *gendarmarie* officers as part of the mediation team. Such a practice of imposed mediations and process outcomes facilitated by government officials backed by armed police and *gendarmarie* officers is common in administrative mediation in Cameroon. It is disconcerting to imagine how far the containment ideology can go in mediation practice.


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Women and Peace-building in the Democratic Republic of the Congo: An assessment of their role in the Inter-Congolese Dialogue

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Abstract

The Democratic Republic of the Congo (DRC) is a country that has never truly experienced peace or democracy. As a result, achieving peace through negotiations has proven to be an extremely difficult process. This paper assesses the Inter-Congolese Dialogue (ICD) process, especially concerning women's contributions to peace-building in the DRC. The role of women at the ICD has rarely been discussed. However, increasingly we are witnessing the importance of women at the peace table. This is critical given the impact of war on women during and after the conflict. The women of the DRC have indeed endured

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many years of gross violations of human rights, and their participation in peace-building in the DRC is therefore critical for the future of the country.

Introduction

The Democratic Republic of the Congo (DRC) is the third largest country in Africa, covering an estimated 2 345 000 square km (Office of the Facilitator for the Inter-Congolese Dialogue 2001:2). The population of the DRC is estimated at 52 million, but it must be borne in mind that there has not been a national census conducted for at least 10 years. Since 1996, two successive wars have wrought havoc amongst the population of the DRC. In May 2001, a study by the International Rescue Committee indicated that 2.5 million people had died as a result of war during the previous 33 months of unrest, solely in the eastern part of the country. Of the 2,5 million, approximately 350 000 deaths were directly attributable to violence, while the others were a result of disease, malnutrition and the collapse of the health system (International Rescue Committee Mortality Study 2005).

The United Nations (UN) Secretary-General, Kofi Annan, stated, 'One of the biggest challenges currently facing Africa and the United Nations is the challenge of bringing peace and stability to the DRC' (Secretary-General of the United Nations 2001). In an attempt to resolve the crisis, the Inter-Congolese Dialogue (ICD) took place from 2000 to 2003. The Lusaka Agreement, Chapter 5, mandated the Dialogue process. After six months of negotiations Sir Ketumile Masire, Former President of Botswana, was eventually chosen as the neutral Facilitator to the ICD.

The aim of this paper is to discuss the critical role of women in the Inter-Congolese Dialogue and the efforts towards achieving peace in the DRC. In addition, the paper will also discuss the particular impact that the conflict in the DRC has had upon the women of the country. Women in the DRC have been victimised, but at the same time have demonstrated self-empowerment. This effort has rarely been highlighted, and even less has been written with respect to this contribution towards peace by the women of the DRC. Unlike their male counterparts, women from all sides of the conflict found mechanisms

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to work within towards peace, regardless of their political affiliation or ethnic background. But problems were encountered with respect to the involvement of women in the peace process.

At the same time, peace in the DRC has yet to be realised, despite the peace agreements. This paper will also look at how the exclusion of women after the ICD may be a contributing factor to the continued instability. Women continue to endure gross violations of human rights on a daily basis within the DRC. The role played by women in peace efforts has often been underplayed, but it is increasingly important to the achievement of resolution to any conflict. The case of the ICD and the DRC will help to illuminate key issues related to peace-building and gender equity in Africa.

Peace-building and Women

It is striking that men are often the planners of war and yet also expected to be the designers of peace processes. How do we expect to attain peace at a negotiation table surrounded by only those involved in the destructive violent process of war? What we need are 'peace promoters' at the negotiation table, and most often this means the inclusion of women (Hunt & Posa 2005). While most men come to the negotiation table directly from the war room and battlefield, women usually arrive straight from civil activism or family care duties. Cynthia Enloe asked, 'To what extent is the status of a local woman, any woman, in the postwar setting, defined by influential decision-makers chiefly in terms of what they were during the recent war?' (Enloe 2002:29). If women are only viewed as victims of war or as care givers then it is difficult for them to be taken seriously as peace negotiators. Several women's organisations throughout Africa have been involved in peace-building efforts at the grassroots levels to ensure that a gender perspective is taken into consideration in the signing of peace accords, thus bringing to the surface women's needs and expectations in a male-dominated process (Puechguirbal 2005:1).

Women are crucial to ideas of inclusive security since they are often at the centre of non-governmental organisations, popular protests, electoral referendums, and other citizen-empowering movements whose influences have grown

with the global spread of democracy (Hunt & Posa 2005). This has also been recognised by international organisations involved in peace-building. On 31 October 2000, the UN Security Council issued Resolution 1325, urging the Secretary-General to expand the role of women in UN field-based operations, especially among military observers, civilian police, human rights workers, and humanitarian personnel. This resolution also relates to many facets of the protection of women and girls during and after conflict. It recommends that constitutions and electoral systems require strong language pertaining to gender equity within such mechanisms as the Bill of Rights, Parliamentary composition, and the judiciary. Resolution 1325 also calls upon all parties to take action in four areas:

- to promote the participation of women in decision-making and peace processes,
- to integrate gender perspectives and training in peace-keeping,
- to protect women in armed conflict, and
- to mainstream gender issues in UN reporting systems and programmes related to conflict and peace-building.

Women are often associated with maternal capacity only, thus keeping them secluded from outside political activities and official peace negotiations (Puechguirbal 2005:4). But, this may be seen as a major asset for peace-building. Social science research supports the stereotype of women as generally more collaborative than men and thus more inclined toward consensus and compromise. Ironically, women's status as second-class citizens is a source of empowerment, since it has made women adept at finding innovative ways to cope with problems (Hunt & Posa 2005). Women are not generally the perpetrators of the crimes committed in a war and hence are viewed as less threatening to the opposing side. In addition, women have roles in society that cut across ethnic, religious or geographic divides, such as that of mothers or caregivers. Within these roles, women have a large interest in ensuring safe environments for their children and their communities.

Although international observers regularly praise the work done by women in peace-building efforts, very few of them give us an account of structural obstacles within societies that prevent women from being recognised as full

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actors in a process led by men in power (Puechguirbal 2005:2). UN Secretary-General Kofi Annan remarked in October 2000, 'For generations, women have served as peace educators, both in their families and in their societies. They have proved instrumental in building bridges rather than walls' (Hunt & Posa 2005). Women have been instrumental in conflicts ranging from Sudan, to the Former Yugoslavia, Burundi, Northern Ireland and India and Pakistan. In the case of Sudan, the Sudanese Women's Voice for Peace met with the military leaders of various rebel groups and secured access to areas where men could not venture to deliver humanitarian aid (Hunt & Posa 2005). Often, women provide a great deal of untapped knowledge about the territories in which they reside and the attitudes held by its peoples. Women in Northern Ireland have often bridged the divide between the Protestants and the Catholics by bringing together key members of each community as mediators to calm tensions (Hunt & Posa 2005).

Former South African President and mediator in the Burundi peace negotiations, Nelson Mandela, suggested at the Arusha peace talks on Burundi, that if Burundian men began fighting again, their women should withhold 'conjugal rights' – like cooking (Hunt & Posa 2005). This is a powerful method of control that women in conflict zones possess.

It was once stated that if you educate a man, you educate a man. But, if you educate a woman, you educate a family. The same adage can be applied in the realm of peace-building. Women are concerned about their families and their communities, whereas the men involved in peace-building most often are only interested in how it affects them personally. Despite the fact that common sense indicates women have a great deal to bring to the peace-building process, they remain marginalised in many peace efforts. As Cynthia Enloe observes: 'Men, like it or not, are the "key players" in the making and unmaking of any society's governability – as party leaders, funders of political activists, clerics, business investors, militia leaders – so it is THEY whose security relevances needs to top the agenda' (Puechguirbal 2005:9). However, some suggest that the key reason women are marginalised in peace processes often has to do with the fact that women are better at forging peace. A UN official once stated that, in Africa, women are often excluded from negotiating teams because the war leaders 'are afraid women will compromise' and give too much away (Hunt & Posa 2005).

It is crucial that those conducting the negotiation processes address the role of women in peace processes. Embassies and diplomats in conflict zones should ensure women are included in any negotiation process. Cultural boundaries should not be an excuse for non-inclusion of women, particularly given the fact that women are often the victims of war. In 2005, 90% of the casualties of the ongoing conflicts were civilians. At the time that Resolution 1325 was passed by the UN Security Council, Ambassador Anwarul Karim Chowdhury, Permanent Representative of Bangladesh, stated, 'Finally, the voices of women have reached the Security Council. The onus is now on the Council to act. We must send a powerful message that women need peace, but more importantly, peace needs the involvement of women' (UNIFEM 2001:49).

The ICD Process

In July 1999, the Lusaka Ceasefire Agreement was signed with the aim of ending hostilities in the DRC. Chapter 5 of the Lusaka Agreement called for a national dialogue and reconciliation. Within chapter 5 of the Agreement there was a call for a neutral facilitator to lead the inter-Congolese dialogue political negotiations. These negotiations were to bring about a new political dispensation in the DRC. The Agreement also identified the Congolese parties who would take part in the dialogue and set out the principles to govern the dialogue process. Paragraph 5.2 provided that the inter-Congolese political negotiations shall include, the Government of the DRC, the Congolese Rally for Democracy (RCD), the Movement for the Liberation of the Congo (MLC), the political opposition and the *forces vives*,¹ and that all participants shall enjoy equal status.

It took six months for the Congolese Parties to the Lusaka Agreement to agree upon a neutral facilitator. On 14 December 1999, Sir Ketumile Masire, Former President of the Republic of Botswana, was appointed by the Organisation of African Unity as the Facilitator of the inter-Congolese dialogue.

1 *Forces vives* refers to the civil society groups within the DRC.

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The duties of the facilitator included: making necessary contacts pertaining to the organisation of the inter-Congolese dialogue; organising, in conjunction with the Congolese Parties, consultations with the view to inviting representatives of political opposition and *forces vives* and lastly, conducting the discussions leading to the establishment of a new political dispensation in the DRC.²

As with any peace process, the inter-Congolese dialogue encountered many setbacks to the original timeframe set out within the Lusaka Agreement. However, conflict resolution is not an exact science and precise timelines will inevitably never be met due to the nature of human beings and conflict. One of the greatest challenges to the Office of the Facilitator was the lack of funding at the beginning of the process. This led to inadequate representation within the DRC during the beginning of the Facilitator's work. Attempts to get the dialogue process off the ground were halted in 2000 due to the unwillingness of the DRC government to co-operate on many levels. Communication between the Office of the Facilitator and the DRC government was practically non-existent at the time due to disagreements about the DRC government's role in the dialogue and their expectations of the outcome of the dialogue. Hence, during the year 2000, much of the Facilitator's work was concentrated on communication with rebel-held areas of the DRC. Things changed in 2001 after the assassination of Laurent Kabila on the 18th of January and the assumption of power by his son, Joseph Kabila.

In April 2001, the Facilitator undertook a trip to the DRC. The main objectives of this trip were to meet with the DRC government in order to obtain consensus on a Declaration of Fundamental Principles that would guide the dialogue process. In addition, the Facilitator wished to take the opportunity to meet with *forces vives* and political opposition members in Kinshasa, Kananga and Lubumbashi (all government-held areas at the time). Prior to this trip, the Facilitator had not enjoyed a good relationship with the DRC government due to a strained relationship between his office and President Laurent Kabila. With Joseph Kabila in power, the mood began to change in the DRC government quarters.

2 See Chapter 5.3 of the Lusaka Agreement.

The signing of the Declaration of Fundamental Principles took place in Lusaka, on May 4, 2001. It proved to be a valuable initiative that gave the necessary impetus to re-start the dialogue process and reaffirmed the commitment of the Congolese Parties to the inter-Congolese dialogue.

The next step was for the Office of the Facilitator to undertake a mission to all eleven provinces of the DRC to supervise designation of the representatives of the Political Opposition and *forces vives* to the dialogue and the preparatory committee meeting. The aim was to ensure a democratic process with respect to the selection of the participants. It was decided that each province would be allowed to designate four representatives at the inter-Congolese dialogue itself, and one of the four would represent the province at the preparatory meeting. However, some adjustments were made to these numbers, in order to reflect the reality on the ground. Representatives from religious groups, human rights associations, trade unions, youth groups, professional organisations and women's groups were added to the delegations. In total, 55 representatives were chosen as a result.

The Preparatory Committee Meeting was then held from the 20th to the 25th of August 2001 in Gaborone. It brought together a total of 74 delegates from armed opposition, Government of DRC, political opposition and *forces vives*. At this meeting, consensus was reached on the number of participants and level of participation at the inter-Congolese dialogue, the draft agenda, draft rules of procedure, venue and date of the dialogue. At this point, it had been decided by the Congolese delegates that the dialogue should take place from the 15th of October in Addis Ababa, Ethiopia.

Many obstacles in the preparation for the ICD in Addis Ababa were encountered by the Office of the Facilitator. As always, the tight timeline presented difficulties in terms of logistics. In addition, the financial situation needed to be addressed adequately. The dialogue was to take place for a 45-day period, hence requiring sound financial backing. It should be noted here that the push for October 15th was one pursued by the armed opposition, since they were afraid that momentum would be lost and they wanted to ensure there was no backtracking by the Government of the DRC. The Government of the DRC on the other hand, pushed for the venue to be Addis Ababa, and not South Africa

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(as pushed for by the armed opposition), hence the date of October 15th was a compromise they agreed to, but were not ultimately committed to upholding.

Several meetings took place between the Facilitator and the groups to be represented at the ICD in order to discuss the difficulties with upholding the October 15th timeline. However, it was ultimately decided that the opening ceremony in Addis Ababa should still go ahead on October 15th. From the outset there were problems with this meeting. Disagreements about the nature and the agenda of the meeting emerged between the parties. Delegates could not agree to continue the meeting as constituted. The alternative was to transfer the dialogue to South Africa in the beginning of 2002. Consultations on various issues did take place and the draft rules of procedure and the draft agenda were discussed by all delegates, except the DRC Government.

On February 25, 2002, the inter-Congolese dialogue resumed in Sun City, South Africa. Once again, negotiations had encountered many interruptions by the Congolese delegates who were displaying stalling tactics. Military movements between the Mouvement de Liberation du Congo (MLC) rebel group and the DRC government forces (FAC) were taking place, which would ensure agreement between the two parties on key issues at the dialogue. After two weeks, substantive work began in Sun City in the various commissions that had been created. These commissions included: the Political and Legal Commission, the Defence and Security Commission, the Economic and Financial Commission, the Humanitarian, Social and Cultural Commission and the Peace and Reconciliation Commission. Individuals from each of the delegations present named their representatives to each of the commissions. The aim was to provide forums for working expeditiously and effectively on the major issues, which needed to be resolved at the inter-Congolese dialogue.

The process in Sun City ended on 19 April 2002 with major agreements signed, a total of 34 resolutions. However, there were still a few outstanding issues with respect to the political dispensation to be implemented and the transformation of the military. These aspects were then carried forward and negotiated with the help of the South African Government and the United Nations. After almost three years of negotiations, the inter-Congolese dialogue came to an end and the final documents were signed. On April 2, 2003, the Pretoria Peace

Agreement was signed in Sun City, South Africa, by all of the parties to the inter-Congolese dialogue. This Agreement called for the installation of a transitional government for the next two years in the DRC. The objective of the transition was the reunification, pacification, and reconstruction of the country, the restoration of territorial integrity and the re-establishment of the authority of the State throughout the national territory.³ The Presidency was to be composed of the President and four Vice-Presidents. The President of the interim government was Joseph Kabila. The four Vice-Presidents were chosen from the following components: RCD (1), MLC (1), Political Opposition (1) and the Government delegation (1). The implementation of the Agreement was to take place immediately following its signature on April 2, 2003.

The Role of Women in the ICD Process

The inclusion of women at the ICD process was not an easily achieved objective. The Lusaka Ceasefire Agreement signed in 1999 does not make any mention of the inclusion of women in the ICD nor does it strongly condemn violations against women. Chapter 5 guides the conduct of the ICD process and was devised purely by the Congolese men involved in the conflict.

The process of choosing the candidates to represent the Congolese at the ICD, during the tour conducted by the Office of the Facilitator throughout the 11 provinces, was marred by difficulties on many levels. However, one of the key problems was the exclusion of women from many of the selection procedures. Since the selection procedure was conducted via first-past-the-post elections, women were at a disadvantage. Out of 73 delegates chosen to participate at the preparatory committee meeting in Gaborone, only six were women.

In addition, some of the six female delegates that were in attendance were specifically instructed by their heads of delegations not to promote gender related issues. For example, when one of the female delegates from the *forces*

3 See Chapter 2.1 of the Pretoria Agreement, 2003.

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vives stood up to promote protection of women in humanitarian situations, one of the female delegates from the RCD group stood up to condemn her for wasting time on issues that are not relevant to the ICD process. Some of the female delegates were also appointed by their delegations because of their relationships – as wives or girlfriends – to key members of their group.

The women delegates joined forces to issue an open letter to the delegates of the preparatory meeting in Gaborone. They stated, ‘This under representation of women does not respond to the principle of equality between the sexes.’ The open letter recalled commitments by the DRC government to the Convention on the Elimination of all Forms of Discrimination against Women, UN Security Council Resolution 1325, and the SADC (Southern African Development Community) Declaration on Gender Equality. The women demanded that the 30% participation quota of women delegates, set by SADC, must be met. In addition, they recalled how in the South African peace negotiation process one out of every two delegates was a woman and what success this brought in terms of women’s participation in the newly formed government of South Africa.

This low level of representation at the preparatory committee meeting was disappointing. Prior to the meeting, the Facilitator of the ICD had called upon parties to the meeting to increase their representation of women to their delegations. Sir Ketumile Masire then held meetings with UNIFEM (The United Nations Development Fund for Women) to discuss possibilities for promoting women’s participation in the dialogue process. UNIFEM held sessions with women in the DRC on the gender dimensions of constitutional, electoral and judicial reform. This is crucial to any peace process as many women delegates may not be adequately educated or informed about the gender dimensions that should be promoted to ensure women’s equality. Having women at the peace table is important, but having women who actively promote women’s issues is even more important.

As stated in the previous section, adjustments were made to the selection of *forces vives* candidates for the ICD to rectify the inequalities in representation, after which women comprised 25% of the *forces vives* delegation. Eventually, 40 women in total participated as delegates at the ICD in Sun City (UNIFEM 2002:84). These 40 delegates only made up a total of 9% of all the delegates at the ICD. One of the difficulties was that despite calls by the Facilitator to increase

the representation of women at the ICD, it was not a mandatory requirement for those delegations participating. However, in addition to the 40 delegates, UNIFEM sponsored 14 consultants and experts to assist the women delegates during the dialogue process with technical expertise.

Prior to the dialogue, from 15 to 19 February 2002, women from the various delegations met in Nairobi. This meeting was organised by Femmes Africa Solidarité (FAS) and Women as Partners for Peace in Africa (WOPPA) – DRC. The delegates agreed upon a declaration and plan of action for all women at the ICD. This was a significant step forward for the women of the ICD process as it signalled the beginning of their harmonisation of views on key issues at the dialogue. Sixty-four participants were in attendance at this meeting in Nairobi. The declaration and plan of action were submitted to the Facilitator.

At the beginning of the dialogue in Sun City, Madame Ruth Perry, Former President of Liberia, made a statement to the Congolese women delegates to show her solidarity and UNIFEM's support of their participation. She stated, 'As mothers of the nation, you have a duty and the right to take a much stronger stand in pushing for the resumption of the talks. The women of Africa are behind you ...do not let us down.'

UNIFEM assisted the women delegates from all parties to the ICD to meet on a regular basis and discuss key issues and strategies with respect to the inclusion of gender-sensitive issues while at Sun City. The women were encouraged to forget about their political affiliations or regional divisions and to work together in an aim of creating peace in the DRC. After the initial breakdown in talks was over, the resumption of official talks in Sun City provided a unique opportunity for the women delegates. They organised themselves to participate at the plenary session by performing a play which highlighted the damage of war in the DRC and sang a song of peace. The women helped to set the tone that, above all, peace in the DRC was paramount to any ethnic, regional or political divisions that existed.

In addition, the women created a temporary office for the administration of their duties. They met regularly to caucus about decisions taken at the Commission level. Five Commissions were created to devise the resolutions that would guide the new dispensation of the DRC: the Political and Legal Commission, the Humanitarian, Social and Cultural Commission, the Defence

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and Security Commission, the Economic and Financial Commission and the Peace and Reconciliation Commission. The women delegates were divided into each of the Commissions as were the delegations of each of the major Parties to the dialogue.

Under the Humanitarian, Social and Cultural Commission specific recommendations were made concerning women. It is interesting to note that Ellen Johnson-Sirleaf, newly elected President of Liberia, headed this Commission and was the only woman to head a Commission at the ICD. It was agreed that rehabilitation centres need to be established for women and young girls traumatised by the war. The Commission also determined that the dignity of women needs to be restored in the DRC, so that they may fulfil their valuable roles in society. In addition, the Commission called for the creation of a National Watchdog body on Human Rights, which should enforce and monitor compliance by the authorities in the DRC with national, regional and international measures relating to human rights. It was also agreed that the identity of women should be reinforced by concentrating on the equality and complementarity with regard to their effective integration in all vital areas of national life through the application of the 30% quota for participation of women in all levels of decision-making at the national level. All laws or customs that may discriminate against women or contravene international legal instruments relating to women must be repealed or modified. It was also agreed that the marriageable age of girls should be increased to 18 years of age.

The Peace and Reconciliation Commission determined that there should be a National Commission for Truth and Reconciliation. The Commission recognised that women should be appointed to the TRC to ensure women's concerns are properly taken into consideration. Resolution DIC/CPR/04⁴ states: 'the National Truth and Reconciliation Commission is empowered to hear any person involved in the crimes and large-scale violation of human rights, including the rape of women and girls in times of war.' The Commission recognised that the attainment of peace and reconciliation in the DRC could not be achieved without respect for women and human rights.

4 Inter-Congolese Dialogue, Peace and Reconciliation Commission

The Political and Legal Commission was hindered by many major disagreements, as it was to guide the very political institutions and legal systems of the new dispensation. The absence of women on the organisation of the Commission was notable, as not one resolution dealt with any issues related to gender. The specifics of the electoral system and the judiciary were not agreed upon at this meeting. The Defence and Security Commission encountered the same fate. The creation of the new national army could not even be decided upon in this Commission, and had to be resolved outside of the ICD process following the closure in Sun City. No mention was made of punishment for those who committed violations against women, nor any mention of those women who participated in combat.

Despite the high stakes involved, the Economic and Financial Commission dealt with many controversial issues. Resolution DIC/CEF/01⁵ dealt with the costs of the wars on the DRC and recommended an examination of the costs in terms of financial, environmental and human costs. In addition, Resolution DIC/CEF/05 suggested emergency economic and social programmes that needed to be put in place. However, neither of these resolutions specifically addressed the needs of women or the effects of the economic situation on their rights.

Without a doubt, the most significant contribution made by the women delegates of the ICD came on the final evening in Sun City. The signing ceremony was set to take place on that evening. However, disagreements over technical issues were still being discussed at the eleventh hour by the delegations. It looked as though the delegates were going to back out of signing the agreements at midnight. However, the women delegates rose from their seats and formed a human chain to block the exits to the committee room. They demanded that the men would not leave until they signed the agreements before them at Sun City. The women succeeded and the agreements were signed!

Following on from Sun City, there were further negotiations that led to the Pretoria Agreement, the Final Act, in April 2003. These agreements clearly

5 Inter-Congolese Dialogue, Economic and Financial Commission.

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outline the composition of the transitional government structures, the defence and security structures and the duration of the transition. One important aspect was the creation of a Ministry dealing with Gender and Family Conditions. Specific aspects related to the new constitution, the judiciary and electoral system, however, were to be devised by the transitional authorities.

Human Rights Violations against Women in the DRC

Women have suffered disproportionately from the conflict in the DRC. Many have been subjected to sexual violence and rape, others murdered, tortured and captured by armed groups. In addition, many women have had to cope with supporting families on their own due to the death of their husbands or their active duty in the conflict. Villages have been destroyed and targeted by those who pillage and plunder for their own profit. Most people do not have access to the basic necessities of life such as water, sanitation, medical supplies or food. The majority of the DRC's people live on around 20 US cents per day and eat less than two thirds of the calories needed to maintain health (Amnesty International 2004). Communication and transportation networks within the DRC are either non-existent or destroyed completely.

Mass rape is one of the biggest crimes committed within the DRC. It is estimated that tens of thousands of women and girls have been raped by government and rebel forces in the DRC. Reports of sexual violence and rape by the DRC army persist even after the peace agreement has been signed. Amnesty International has denounced widespread and unpunished rape in the DRC. Marie Madeleine Kalala, Minister for Human Rights, said, 'The Government is determined to deal with impunity of all kinds, adding that it would be attentive to sexual aggression, particularly rapes in the east, which were especially unacceptable in the absence of war' (IRIN 2004). Her announcement followed the arrest of 12 suspects of the regular army forces who had been detained for allegedly beating and tearing off clothes of women in public places in Kinshasa (IRIN 2004). These arrests are an isolated case and most rapists do not get brought to justice in the DRC.

However, despite such movements there remains harsh criticism over the lack of action by the government on rape and sexual violence in the DRC. Most members of the DRC transitional government have displayed indifference to sexual violence and mass rape.

We had thought that it was because their attention was focused on political questions in a situation that was so difficult that it was impossible to formulate an adequate response; but now we are in a period of pacification of the country, we would have thought it was time to talk about sexual violence against women (Amnesty International 2004).⁶

The government claims it has limited resources to cope with the issue of rape and that it is not an epidemic, but isolated incidences. Less than 0.1% of the government's health budget has been allocated to the care of the victims of sexual violence (Amnesty International 2004). Their priorities need to be revised. In a joint initiative by non-governmental organisations and the UN, agencies in the DRC developed a framework plan to halt sexual violence in the East of the DRC. The plan estimates that more than 30 billion USD will be needed to comprehensively address the issue (Amnesty International 2004).

Rape is stigmatised in the DRC and many women are rejected from their families and communities as a result. This carries not only social exclusion but also economic consequences for these women. The belief that exists is that somehow the women are responsible for what happened to them and are viewed as shameful. Slowly, women's organisations and rape survivors are discussing their experiences and challenging the discriminatory attitudes they face (Amnesty International 2004). Estelle, a girl of 12, was raped by a combatant in February 2004 and can no longer face attending school. She stated, 'I don't feel brave enough to go. The other girls in the neighbourhood make fun of me. They call me the little girl who sleeps with soldiers in the forest' (Amnesty International 2004).

Rape has also impacted the women economically. Agricultural workers and traders have been raped and find it impossible to continue their activities because the rapists stole their work tools and because they have been physically

6 The quoted words are from a UNAIDS officer in Kinshasa.

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and psychologically weakened by the injuries and trauma of the rape (Amnesty International 2004). A great number of homes have been destroyed by those soldiers that rape and pillage villages of the DRC. Many women are often left little choice but to resort to prostitution for survival. Only two hospitals in the DRC currently have the capacity to provide surgery or support to rape victims (Amnesty International 2004).

Many rape victims are forced to see their perpetrators on a regular basis in the streets of their villages. The Congolese authorities or the UN peacekeeping forces do not protect victims. This results in women being fearful of their safety should they report their rape. Instead they live in perpetual fear and endure the humiliation associated with rape.

UN peacekeepers in the DRC have also been accused of committing rape. 'Sexual exploitation and abuse appear to be ongoing, thereby highlighting the inadequacy of current measures to address the problem in peacekeeping operations,' stated Prince Zeid Raád Zeid Al-Hussein, Jordan's permanent representative to the UN (IRIN 2005b). Some of the worst abuses have taken place in Ituri, northwest DRC. The UN has been severely criticised for not investigating such situations adequately and for failing to punish the soldiers responsible.

A significant aspect to the conflict in the DRC has been the participation of women and girls in the armed forces. Some are forcibly recruited and used as 'wives'. Approximately 12 500 girls participated in armed conflict according to Save the Children, accounting for 40% of all children involved in armed groups in the DRC (IRIN 2005c). The disarmament, demobilisation and reintegration process has been criticised in the DRC for not addressing the needs of these girls. Girls have reported that community members have assumed that they have been sexually abused and are therefore carriers of HIV and other sexually transmitted diseases, and that they thereby 'lost their value' to their communities (IRIN 2005c). Many of the girl soldiers were forced to become sexual slaves. An effective demobilisation and reintegration programme needs to address the concerns of these girls. This would include: mediation with the communities to explain that girls were coerced or forced to participate, access to school, networks that can provide emotional support, and medical assistance (Save the Children 2005).

Women and the New Political Dispensation

Despite the efforts of women at the ICD process, women are still under-represented at decision-making levels in the DRC. Women are far from attaining 30% representation in decision-making bodies of the Government of the DRC. At the moment there are just 9 women among the 61 ministers and vice-ministers in the transitional government, and only 60 women sit in the two chambers of the 620-member parliament (IRIN 2005a). In addition, UNICEF reports that only 49% of Congolese girls attend school. This number will have to drastically increase in order to address the gender inequalities prevalent at the level of decision-making.

Sexual violence against women is prevalent within the DRC. 'Though it is the woman who is, in many cases, the sole breadwinner of the family in times of crisis aggravated by war, she is the victim of sexual violence,' said Marie-Ange Lukiana Mufwankol, senator and Vice-President of *Parti du People pour la Reconstruction* (IRIN 2005a). It is documented that in reconciliation processes, the most under-reported abuses are those experienced by women. Truth and reconciliation commissions or post-war tribunals rarely seek out testimony from women and hence this needs to be addressed in the DRC.

Reparations for widespread physical and psychological trauma, economic loss and the destruction of property also need to be addressed in the DRC. Any reparations programme must recognise the human rights violations endured by women in the DRC.

Conclusion – the Future of the DRC

Joseph Kabila was sworn in as the interim President of the transitional government of the DRC on April 8, 2003. It is hard to see how the transitional government can succeed when the current transitional President is still sponsoring fighting in various parts of the country. It is significant to note that Joseph Kabila did not see the necessity of his presence in Sun City on April 3, 2003 for the signing of the Pretoria Peace Agreement. Much like his father, Joseph Kabila has always wished to depict himself as superior to the rebel

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leaders, his presence at the signing ceremony would have placed him on an even standing with his rebel counterparts.

The future of the DRC is uncertain and plagued by continued hostilities in the east of the country. Elections have not yet taken place due to the many obstacles associated with organising elections of such a large territory and a population that has been ravaged by war and corruption. The elections were to be held 24 months after the beginning of the transitional period, but the time limit may be extended by up to six months.

It is clear that the DRC government must address the discrimination against women in Congolese society. Rape is a crime that cannot be ignored in the DRC due to the serious consequences it imposes. More money and commitment must be given to programmes that address the needs of rape survivors as well as contribute to women's empowerment in the DRC. Education needs to take place for the victims, perpetrators and societies as a whole about rape and human rights.

The participation of women in the peace process did yield some positive results in terms of gender awareness. However, due to the low level of representation in the process and the difficulties of changing Congolese attitudes towards women, the road to equality is yet to be attained in the DRC. The international community must support and actively encourage the inclusion of women in the new dispensation of the DRC as well as the prosecution of those responsible for crimes against women. The lesson to be learned for future peace processes is that adequate provision must be made for the inclusion of women in decision-making mechanisms and this must be done at the earliest stages possible.

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Nationalist-Military Alliance and the Fate of Democracy in Zimbabwe

*Sabelo Ndlovu-Gatsheni**

Abstract

This article examines the dynamics of the connections between the nationalist government of Zimbabwe and the armed forces, which have translated into serious politicisation of the security sector and heavy militarisation of politics in the country. What has emerged in Zimbabwe is a clear nationalist-military oligarchy as a form of government. The question is: When did this nationalist-military oligarchy emerge? What are its dynamics and implications for governance in Zimbabwe? This article grapples with these fundamental questions in an endeavour to contribute to the on-going and animated debate on the crisis of governance in Zimbabwe in the 21st Century.

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Introduction

On the 28th of December 2005, the then president of the main opposition party, the Movement for Democratic Change (MDC), Mr. Morgan Tsvangirai¹ wrote a letter to President Robert Mugabe, which was copied to the Chairman of the African Union (AU), the Secretary General of the United Nations (UN) and the Chairman of the Southern African Development Community (SADC), complaining about how Robert Mugabe and the ruling Zimbabwe African National Union – Patriotic Front (ZANU-PF) have transformed the Zimbabwe Defence Forces (ZDF) and the Zimbabwe Republic Police (ZRP) ‘into combative political units of your party ZANU PF.’ Mr. Tsvangirai’s letter went on to highlight how the President of Zimbabwe as the Commander-in-Chief of the ZDF and as State President has violated the Zimbabwean constitution through politicisation of the armed forces. His letter is worth quoting at length because it encapsulates the whole problem of politicisation of the security sector and the militarisation of politics as well as the dangers of these processes to democracy and the future of civilian government in Zimbabwe. Beginning his letter, Mr. Tsvangirai stated that:

As the Commander-in-Chief of the Zimbabwe Defence Forces (ZDF), you are no doubt acutely aware of the Constitutional provisions and the relevant Acts of Parliament governing the conduct and operations of the Zimbabwe Defence Forces (ZDF) and the Zimbabwe Republic Police (ZRP). There are neither constitutional nor legal provisions in either the Constitution or the Defence Act and the Police Act which empower you to transform these national institutions into combative political units of your political party ZANU PF. Instead, in the Constitution and relevant Acts of Parliament, an impregnable line is clearly drawn between the areas of military operations

1 The MDC suffered an internal split in 2005 over the issue of participation in the senatorial elections. Tsvangirai was opposed to participation but some of his colleagues wanted participation. At the time of writing Tsvangirai is the president of one faction and the other faction is led by Professor Arthur Mutambara.

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and competence and those that are within the province of competence of political and civic authorities. You are constitutionally bound to maintain and uphold the line. Where the line is drawn is not a matter of interpretation, argument or haggling. The line is cast in stone. To equivocate on this fundamental principle is to overthrow a critical provision of the constitution and subvert the relevant Acts of Parliament. The ZDF and the ZRP are specifically and explicitly barred from participating in politics and political process of the country as organized units with distinctive preferences operationalised in the context of military and police formations aligned to a particular political party. They can participate in politics as individual private citizens entitled to cast their votes in secrecy of the ballot box. This line between military and political/civil matters is designed to ensure the perpetuation of representative civilian government as opposed to the imposition of an unrepresentative military junta. For the record, I have stated that under an MDC government, the professional standing, hierarchy and integrity of the Army and the Police will be jealously guarded. The Army and the Police will be insulated from the negative effects of competitive politics on their esprit de corps (Tsvangirai 2005).

For the purposes of democracy and the canons of constitutionalism, Tsvangirai's letter is vital because it directly tries to protect the constitution as the supreme governing instrument in Zimbabwe. Secondly, it alludes to the importance of separating military and civilian issues. Thirdly and more importantly, it raises some concerns about the danger of creating conducive environment for a military junta in Zimbabwe.

This takes us to the fundamental question of how the civilian government mobilised resources and mechanisms to protect themselves from their own security forces and how ruling elites have succeeded in keeping the military on its side, but against the people. Zimbabwe under ZANU-PF has seen the ruling nationalist elite succeeding in politicising the army and the police and using these national institutions against the civilian population and opponents since the achievement of independence in 1980. Simon Baynham has underscored the fact that 'clearly, this is a subject of key importance but one that has received inadequate attention in the study of African political affairs' (Baynham 1992:5).

In Zimbabwe, a strong alliance between ZANU-PF nationalist leadership and the military forces has stood at the road to democracy and post-nationalist dispensation. It has guarded the nationalist shrine up to today and has defined politics in terms of a straight-jacket that only fits those with nationalist and military background. The latest causality has been the embers of democracy and post-nationalist alternative that started burning in 2000. These have been beaten back by threats and actual violence unleashed on the democratic train by the armed forces (regular ones) in collaboration with irregular quasi-military elements, both in support of the ruling ZANU-PF nationalist regime. This is a point made clearly by Tsvangirai in his letter when he said:

Tragically, the record of your regime displays a deliberate strategy to bend the Constitution and warp the relevant Parliamentary statutes in order to obliterate this critical separation between civilian and military affairs, as a way to thwart and neutralize legitimate and peaceful democratic political change. In the result, you have now created a civil-military junta, which acts as an illegal bulwark against democratic political opposition in general. This is amply demonstrated by the undeniable fact that since 2001, you have remained silent when members of the ZDF and ZRP officer corps make public political pronouncements singling out the MDC as an enemy political formation that must be destroyed, while at the same time, the same officers profess unqualified allegiance to your political party, ZANU PF (Tsvangirai 2005).

Indeed the military forces in Zimbabwe, particularly the senior officers, have not hidden their partisan dispossession in the political landscape of the country. For instance, in December 2001 General Vitalis Zvinvashe, then overall commander of the ZDF, flanked by the commanders of the Zimbabwe National Army (ZNA), Airforce, Police and the Directors of the Central Intelligence Organisation (CIO) and Prisons, openly announced, at a televised press conference, their partisan and unequivocal allegiance to ZANU-PF. They went on to threaten a military takeover if another party other than ZANU-PF won the presidential elections. This action of the military commanders more than any other incident convinced many people that there

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was indeed an unbreakable umbilical cord between ZANU-PF nationalist elites and the military and that the military had transformed itself into a willing instrument of a particular political party and a particular presidential candidate.

The military commanders' open declaration of their intention to negate popular will if it happened to be against ZANU-PF amounted to a threat to the constitutionally guaranteed provisions and democracy at large. Since 2000, a significant number of military commanders have uttered political statements favourable to ZANU-PF and threatening to those challenging ZANU-PF's more than twenty five years rule over Zimbabwe.

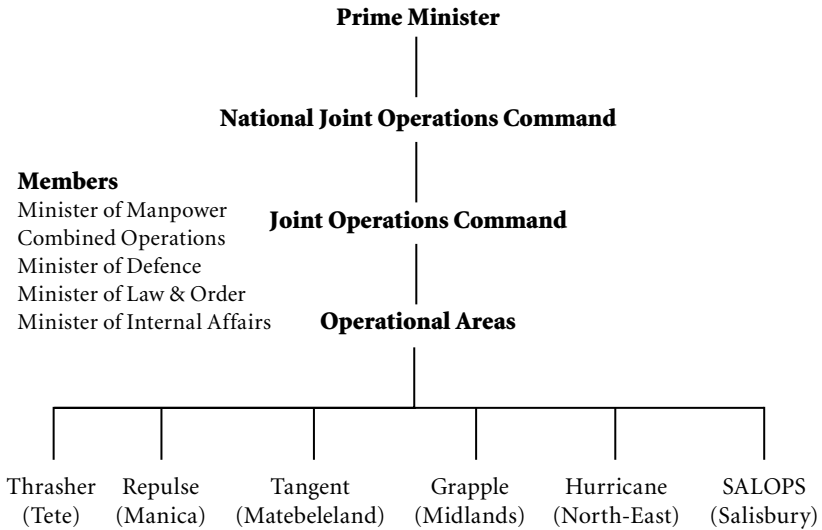
Dangers of Involving the Military in Politics: Some Theoretical Issues

The legendary Napoleon Bonaparte's maxim that without an army there is neither independence nor civil liberty is countered by Edmund Burke's warning that an armed disciplined body is in essence dangerous to liberty. Indeed, armies use coercive force to achieve their objectives. The military has three main advantages over civilians. Firstly, superiority in organisational unity. Secondly, it has a highly emotional symbolic status. Finally and more importantly, it has superiority in the means of applying force (Finer 1962:6). Baynham emphasised the fact that since the military has an 'effective monopoly in the organized use of force' they should utilise this power in a responsible manner for the benefit of society, rather than in an uncontrolled and self-serving fashion. He proceeded to add that, in order to ensure that this takes place, most societies have insisted on the subordination of the armed forces to the political authority of the day (Baynham 1992:1). However, in Zimbabwe the issue of subordinating the armed forces to the authority of the day has taken a dangerous twist with grave consequences for the future of civilian government.

Due to the exigencies of fighting a protracted war of liberation from settler colonialism, the ruling ZANU-PF party operated as a quasi-military organisation. Since the early 1970s when the armed liberation struggle started, ZANU-PF (then known as ZANU only) never lost its military attributes. It became a party of civilian nationalist politicians and armed nationalist indoctrinated guerrillas. On the Rhodesia settler colonial side, the exigencies of counter-insurgency gave

too much power to the Commander of the Combined Operations, General Peter Walls. Figure 1 shows the Rhodesian military structure in the period 1977–1979:

Figure 1: Rhodesian Military Structure, 1977–1979



Source: Chitiyo & Rupiya 2005:332.

By the time of the ceasefire, the civilian leadership of Rhodesia had given over total control of military matters to Peter Walls to the extent that he was part and parcel of the delegation that negotiated the transition to independence at the Lancaster House Conference in Britain (Morris-Jones 1980, Bhebe & Ranger 1995, Stiff 2000).

Both ZAPU and ZANU civilian politicians fought hard from the 1970s to put those with military training under their control. The young military officers were indeed beginning to challenge the civilian leadership of the nationalist movement. The notable incidents – that were greeted with violence, detention,

and/or co-optation – being the 11 March Movement in ZAPU in 1971,² the Nhari revolt in ZANU, and the Zimbabwe People's Army (ZIPA) saga that affected both ZAPU and ZANU in the 1970s. All these incidents, of which details are available in Ngwabi Bhebe and Terence Ranger's *Soldiers in Zimbabwe's Liberation War* (Bhebe & Ranger 1995), mirrored and magnified a lurking duality of power between civilian nationalists and their military wings. The crushing of ZIPA was a clear testimony to the resilience and strategic guile of the old guard.

Guerrilla armies of ZAPU (ZIPRA) and ZANU (ZANLA) like other armies enjoyed the monopoly of applying force on civilians. Secondly, guerrilla armies were different from conventional forces in that they were highly politicised if not indoctrinated to the extent that they operated as military cum political units. They carried in their heads nationalist movements' ideologies and they were the active recruiters of the masses on behalf of their nationalist parties. They had access to the masses and they played a fundamental role in politicising the peasants in rural Zimbabwe (Ranger 1985, Lan 1985, Kriger 1992, McLaughlin 1996). Thirdly, guerrilla armies were not confined to the barracks; rather they existed like 'fish in water' among the public, to borrow Mao-Tse Tung's words. On this issue, Ruth First noted that once the armies stepped beyond the barracks to engage in public policy making, 'they soaked up social conflicts like a sponge' (1970:436). First here was referring to conventional forces that are normally confined to barracks, but her analysis is also very relevant to guerrilla armies of ZAPU and ZANU in Zimbabwe. Indeed both ZANLA and ZIPRA 'soaked up social conflicts like sponges' in rural Zimbabwe to the extent that they even tried to wipe out what they considered as 'witches' (Alexander et al 2000, Nhongo-Simbanegavi 2000).

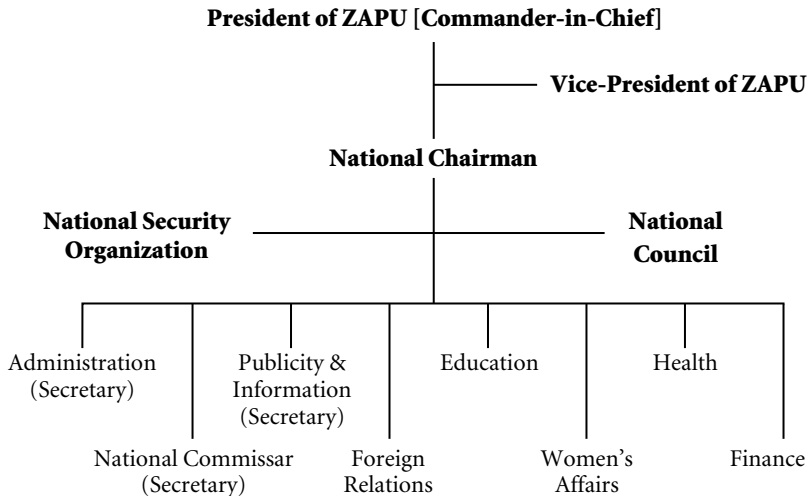
It is important to note that because the guerrilla armies operated as military cum mini-politicians, they became interested parties in politics. All guerrillas had passed through both military and political education in the rear bases in Mozambique and Zambia. Thus, even though they were not directly involved in the political direction of the nationalist movement, some of them tried to

2 This incident, just like the whole story of the contribution of ZAPU to the liberation struggle, remains less well known. However, it is documented in a booklet by O. Tshabangu (1979).

assume the role of umpires – the *ultima ratio regum* – of how the nationalist movement was to operate and under what conditions and terms. ZIPA was a clear example of this trend in the nationalist movement. ZIPA guerrillas (an out-fit of both ZIPRA and ZANLA) tried to vigorously embrace the Marxist-Leninist philosophy ahead of their leaders, discarding factionalism and fight as a united force, and to embrace the armed liberation option as the only solution to the Rhodesian problem. This initiative by the guerrillas themselves with the support of the frontline states was not welcomed by the civilian leadership of the nationalist movement. There was fear of losing dominance to the military wings as well as the direction of the revolution. Hence, ZIPA was quickly crushed and labelled a reactionary initiative (Bhebe & Ranger 1995).

Efforts were taken in both ZAPU and ZANU to subordinate the armed guerrillas to the civilian nationalist leaders. First, the leaders of the parties elevated themselves to the High Commanders of the military wings. Secondly, the guerrilla leaders like General Josiah Tongogara in ZANU and Nikita

Figure 2: ZAPU Political Structure



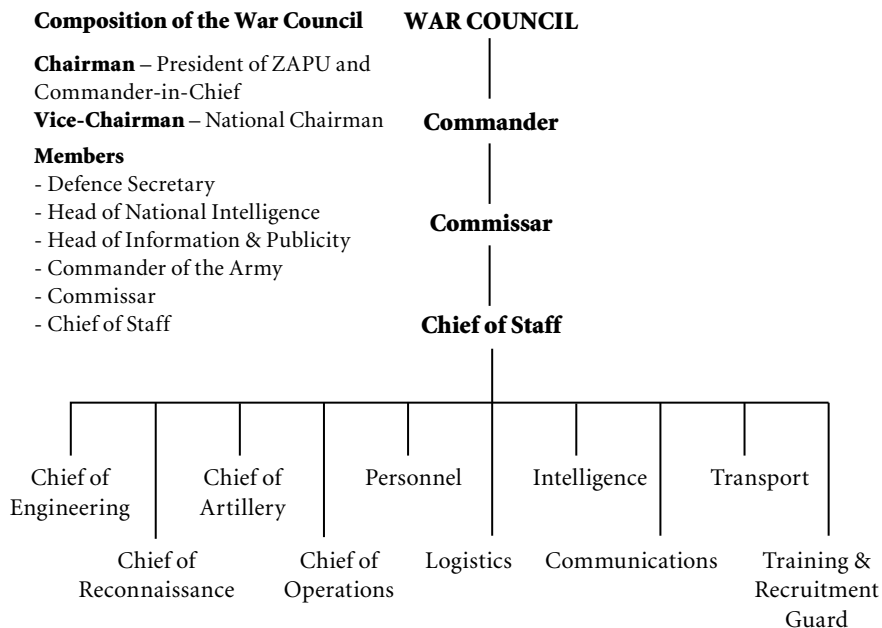
Source: Chitiyo & Rupiya 2005:333.

Mangena (later Lookout Masuku) in ZAPU were integrated into the highest decision-making body of the nationalist movements (Politburo). Figure 2 on page 56 shows the ZAPU Political Structure.

The fusion of the military and the political leadership in ZAPU is generally attributed to the Jason Ziyapapa Moyo document entitled 'Observations on Our Struggle of 1976'. See Figure 3, which gives details on the fusion – if not the subordination of the military to the civilian political leadership of ZAPU. Ziyapapa was the deputy President and one of the key strategists of ZAPU before his assassination in 1976.

It was in the late 1970s that ZAPU created the Revolutionary Command Council as a representative body of party officials and military commandos. The War Council was the executive body that would take decisions emanating

Figure 3: ZIPRA Command Structure



Source: Chitiyo & Rupiya 2005:334.

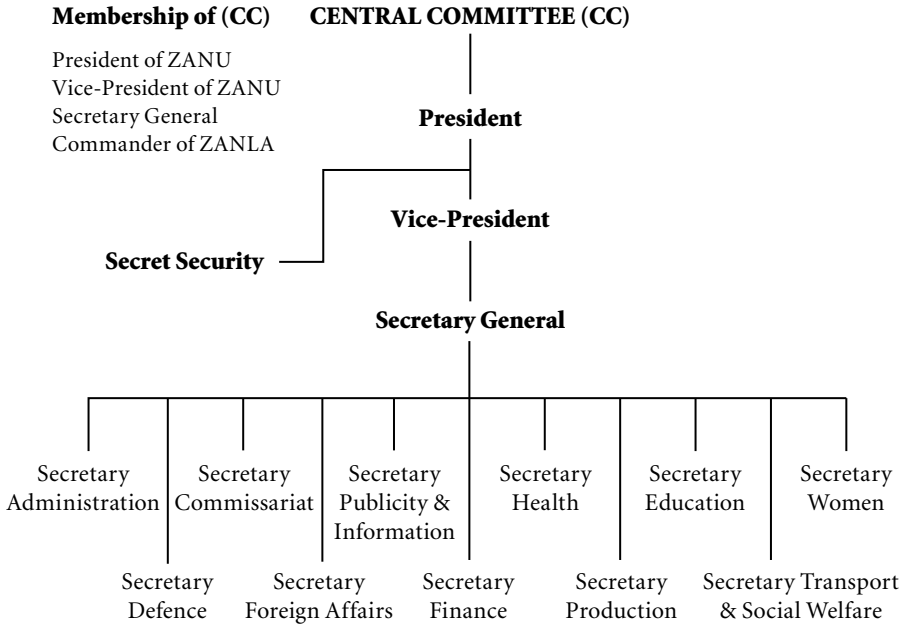
from Revolutionary Council discussions and was linked directly to the ZIPRA High Command. Efforts were made to unite the military and civilian nationalist aristocracy, to the extent that 'The same men wore both hat and helmet' (Nordlinger 1977:11). In this way, civilian nationalists won the day and civilian supremacy was maintained because the differentiation between military and non-military elites was very thin or insignificant to the extent that nationalist liberation war propaganda and ideology taught that all the leaders of the nationalist revolution were commanders of the military wings including those without any slightest military training and know-how.

Samuel P. Huntington applied himself fully to unravel the question of how civilian supremacy over military forces is achieved. He made a conceptual distinction between the 'objective' and 'subjective' controls. When applied to guerrilla armies and nationalist liberation movements, Huntington's models reveal interesting scenarios. Professionalism can be a disciplining factor to a military person, while patriotism and indoctrination can discipline a guerrilla fighter. The more patriotic the guerrilla fighters are, the more they would be prepared to serve the people and to die for them and the less of a threat they would pose to the nationalist leadership. Guerrilla armies were by and large constituted as political forces that operated under close party supervision (Huntington 1957).

Eric Nordlinger's penetration model is also very relevant to the understanding of the interaction between guerrillas and civilian nationalist leaders in Zimbabwe. Nordlinger emphasised the idea of civilian dominance that was ensured through the deployment of ideological controls and surveillance, founded upon a dual structure of authority in which military personnel were subordinated to political functionaries (Nordlinger 1977:11). In the case of ZANU and ZAPU, party commissars worked very hard in making sure guerrillas toed the party line (Nhongo-Simbanegavi 2000). See Figure 4 and Figure 5 on pages 59 and 60 respectively.

In the case of the ZANLA forces, they were expected to know ZANU party hierarchy to the extent that whenever they politicised the peasants their slogans followed a clear power line, starting with *Pamberi na Comrade Robert Gabriel Mugabe* (Forward with Comrade Robert Gabriel Mugabe). The civilian party leaders were literally worshipped by the rank and file of the party including the

Figure 4: ZANU Political Organisation, 1977–1980

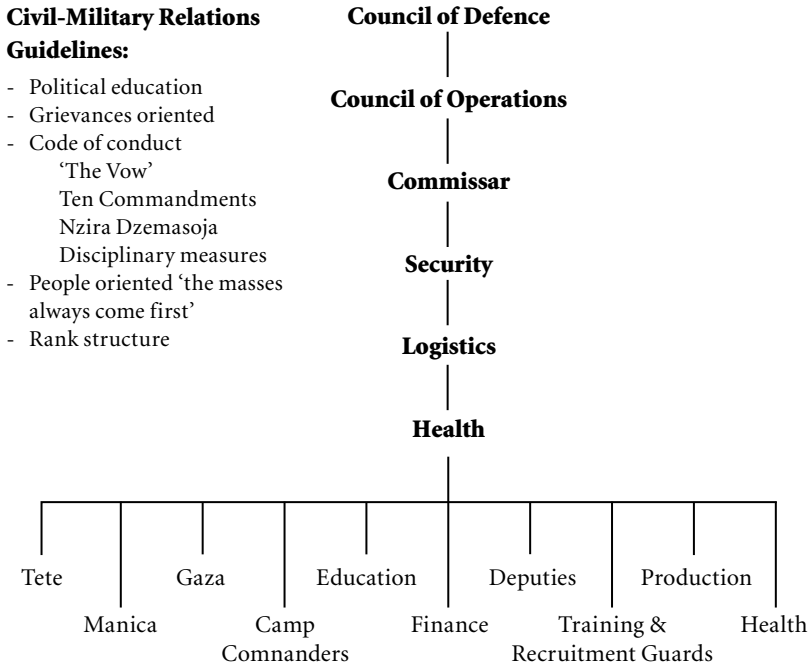


Source: Chitiyo & Rupiya 2005:335.

military forces. The party leader behaved as a super being and the messiah of the revolution. Terence Ranger argued that perhaps it was from this worship of the party leader that the post-colonial problem of personality cult was created (Ranger 2003).

At the end of the day one is forced to rephrase Samuel Huntington's excellent theoretical intervention to read: 'Subjective civilian control achieves its end by civilianizing the military, making it the mirror of *the nationalist party*. Objective civilian control achieves its end by militarizing the military, making them the tools of *the ruling nationalist elite*' (Huntington 1957:83). [The italicised part is my rephrasing of Huntington's statement to fit armies under nationalist regimes.]

Figure 5: ZANLA High Command



Source: Chitiyo & Rupiya 2005:335.

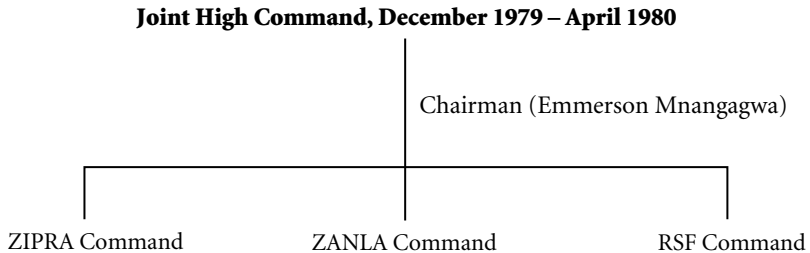
The new Zimbabwean state that emerged from the armed liberation struggle inherited highly politicised and highly indoctrinated military units. The Rhodesian Security Forces (RSF) were indoctrinated to believe that ZANLA and ZIPRA were terrorists and the latter believed that the former were colonial forces that needed to be disbanded. However, the exigencies of the compromise at Lancaster House dictated that these military units with different ideologies were to be integrated into a single Zimbabwe National Army (ZNA). This amalgamation of different military forces into a single national army takes us to the question of the character of the post-colonial Zimbabwean army.

The Character and Orientation of the Zimbabwean Military Forces

The Lancaster House Agreement of 1979 that gave birth to Zimbabwe in 1980 determined the character of the new army of Zimbabwe. The army was to be an integrated force of three major forces: ZANLA of Robert Mugabe, ZIPRA of Joshua Nkomo and the Rhodesian Security Forces of Ian Smith.

The stages in the integration of the three different forces included the formation of a Joint High Command (JHC) comprised of personnel from ZIPRA, ZANLA and RSF. The JHC emerged from the Ceasefire Commission. At the helm of JHC was the new Minister of State Security, Emmerson Mnangagwa. RSF Commander Lieutenant General (Lt. Gen.) Peter Walls was appointed commander of the JHC. His task was to implement the new defence policy, and manage the integration and conventional training that was to follow, while preparing to defend the state, the people and the country (Parliamentary Debates 1980:964). Wall's colleagues (subordinates) in the JHC were senior commanders of the Rhodesian Air Force, ZANLA and ZIPRA. The idea was that it was necessary to demonstrate unity in the top echelons of military command in order to facilitate the same process in the middle of the military hierarchy, as well as among the rank and file (Chitiyo & Rupiya 2005:339). See Figure 6 for the transitional JHC structure:

Figure 6: Transitional Period



Source: Chitiyo & Rupiya 2005:338.

The integration exercise, however, was to be carried out within the context of tension in the country and among the military units themselves. For the first time, ZANLA, ZIPRA and RSF were to come nearer to each other. ZANLA and ZIPRA were expecting privileges as guerrilla forces that brought about the liberation of Zimbabwe. The Rhodesian forces looked at ZIPRA and ZANLA as ill-trained and unprofessional forces. ZIPRA and ZANLA expected to be transformed overnight into the Zimbabwe Defence Forces (ZDF). They believed that the Rhodesian forces were to be disbanded as a colonial force that oppressed the people (Interview with Leonard Ndlovu, Ex-ZIPRA). ZIPRA as a former military wing of PF-ZAPU was also agitated by the fact that their party (ZAPU) and their leader, Joshua Nkomo, had lost elections in 1980, while ZANLA forces were very happy that their party (ZANU-PF) and their leader (Robert Mugabe) had won the elections in 1980 (Mazarire & Rupiah 2000).

While the ZANLA forces sometimes accommodated ZIPRA forces as part of the liberation army, they were outrightly hostile towards the Rhodesian Security Forces. They also privileged themselves above ZIPRA whose leader and party had lost the chance to rule Zimbabwe. These tensions broke out into open military engagements, pitting together ZANLA against ZIPRA in Assembly Points (APs) of Chitungwidza, Connemara, Ntabazinduna, and Entumbane (Stiff 2000).

As the integration exercise was going on, the politicians were busy trying to solve and settle old scores. Inflammatory language was very common among ZANU-PF politicians who were so elated with electoral victory that they forgot that the major task of nation-building and the creation of a national army needed a sober thought. The most provocative ZANU-PF leaders were Enos Nkala, Edgar Tekere, Maurice Nyagumbo, Emmerson Mnangagwa, and Kumbirai Kangai (Catholic Commission for Justice & Peace, and Legal Resources Foundation 1997). PF-ZAPU's response came through Josiah Chinamano, the Vice-President, who in early November 1980 alluded to the dangers of ZANU-PF slogans which had the effect of denigrating armed ZIPRA men. He referred to such slogans as *Pasi ne Machuwachuwa* (Down with ZIPRA) and *Pasi ne vanematumbu* (Down with those with big stomachs – a reference to Nkomo) (*The Herald*, 7 November 1980). Some ZANU-PF leaders took advantage of their electoral victory to settle scores with PF-ZAPU and the ZIPRA forces. PF-ZAPU and the ZIPRA forces were to be forced to accept that

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they were a junior force in the liberation struggle and Joshua Nkomo was to surrender the title 'Father Zimbabwe' (Ndlovu-Gatsheni 2005).

Norma Kriger (2003) noted that from the start ZANU-PF wanted to build a party nation and a party state, crafted around and backed by its military wing (ZANLA). This was clearly demonstrated by the continued use of party slogans, party symbols, party songs and regalia at national ceremonies like Independence and Heroes Days (Kriger 2003:75). ZANU-PF and ZANLA moved quickly to occupy the centre of Zimbabwean political space immediately after independence. The national broadcaster, Zimbabwe Broadcasting Corporation (ZBC), was soon monopolised by the ruling party (ZANU-PF) and its war-time military wing (ZANLA). A concerted effort was made to de-legitimise and peripherise ZIPRA from the new ZANU-PF reconstructed liberation war history. ZIPRA was soon cast as a threat to the sovereignty of Zimbabwe, and its war-time commanders and the whole leadership of PF-ZAPU were reduced to 'rabble-rousers and political malcontents who were still licking their wounds as a result of having lost the elections...' (*The Chronicle*, 11 November 1981).

David Martin and Phyllis Johnson's book *The Struggle for Zimbabwe: Chimurenga War* (1981) became the official master narrative of the liberation struggle that sidelined the other liberation forces and movements, elevating ZANU-PF and ZANLA to the centre of the whole nationalist history of Zimbabwe. This book was distributed to every secondary school in Zimbabwe, marking the beginning of partisan ethos in Zimbabwe.

While the policy of reconciliation adopted in 1980 emphasised unity in the country, the political actions of the ZANU-PF leaders compromised every aspect of this noble notion. ZANU-PF politicians behaved as though Zimbabwe was a one-party state. For instance, every Sunday morning up to the time of the Unity Accord of 22 December 1987, the programme, *Dzimbo dzeChimurenga Dzakasunungura Zimbabwe* (Chimurenga Songs that Liberated Zimbabwe) consisted of ZANLA songs only. This raised a lot of resentment from other people who felt that ZIPRA songs were supposed to be included too. One letter in the *Herald* of as far back as August 1980 protested against this bias, saying the songs were '...intended to suggest that ZANU (PF) alone fought and won the liberation war and this is a disgraceful distortion of history' that seeks 'to shun the visible reality that ZAPU (PF) exists and has fought as much as ZANU (PF)

has done in the liberation war' (*The Herald*, 21 August 1980). Since the end of the liberation war, ZIPRA mobilisation songs were not played on airwaves.

The broader issue of power struggles among Zimbabwean nationalists as well as factionalism that pre-dated 1980 is well treated in Masipula Sithole's book *Zimbabwe: Struggles Within the Struggle* (Sithole 1999). What has not received adequate analysis were the implications and actual impact of this aspect of nationalist politics on the nature of the military that finally emerged in Zimbabwe. As noted by Horace Campbell, there were a number of questions raised by the prospect of integrating three distinct armies with different military traditions and differing perceptions of their role in the politically independent Zimbabwe. The pertinent question that dogged the ZANU-PF leadership and Robert Mugabe, in particular, as the Prime Minister and Minister of Defence was: What sorts of political control would be required to keep cohesion and discipline in the armed forces? (Campbell 2003).

The entire ZANU-PF leadership did not trust the former ZIPRA guerrillas as well as the former Rhodesian Security Forces.³ These two forces too were equally suspicious of ZANU-PF and former ZANLA forces' intentions and plans. ZANU-PF politicians' careless speeches worsened the fears among ex-ZIPRA and ex-Rhodesian forces. The first result of all this was demobilisation or early retirement of many white officers from the army. The second consequence was violent clashes between ex-ZIPRA and ex-ZANLA forces at the Assembly Points. The third impact was the demobilisation of a number of ex-ZIPRA forces from the army. The fourth result was a clear and sure move by ZANU-PF away from creating an integrated national army and towards making its war-time military wing the core of the Zimbabwe National Army (ZNA).

This move was concretely indicated by the openly hostile official position towards ex-ZIPRA forces. Instead of being embraced as fellow liberation

3 Having lost their political influence, most former RSF senior officers soon lost interest in the military. In June, Lt. Gen. Peter Walls tendered his resignation to the Prime Minister and Minister of Defence, citing personal reasons. Senior Air Force Commander Alexander McIntyre also resigned and was followed by other middle- and lower-ranking white soldiers.

forces, they were largely viewed and ostracised as a nucleus of an alternative sovereignty, derived from the pre-colonial independent Ndebele state. They and their political leaders were seen in the same light as a potential source of counter-hegemonic alternative that needed to be crushed very quickly. Therefore, the clashes between ex-ZIPRA and ex-ZANLA forces were openly blamed on one side, that is ZIPRA, and their unwanted party, PF-ZAPU. Therefore, the discovery of arms caches in PF-ZAPU and ZIPRA-owned properties in 1982 was enthusiastically seized by ZANU-PF leadership as the clearest example and exhibit that ZIPRA and PF-ZAPU were planning to violently depose the democratically elected government of Zimbabwe under ZANU-PF.⁴ No wonder then that the discovery led to the crumbling of the veneer of the coalition government and the tenuous national unity (Catholic Commission for Justice & Peace, and Legal Resources Foundation 1997).

The leader of PF-ZAPU, Joshua Nkomo, was dismissed from the government following the discovery of the arms caches. The two former commanders of ZIPRA (Dumiso Dabengwa and Lookout Masuku) were arrested and detained on the grounds of plotting to topple ZANU-PF government. Other PF-ZAPU cabinet ministers were withdrawn from the Government of National Unity (GNU). As though this was not enough, widespread witch-hunts were

4 Arms caches were found in ZAPU-owned properties like NITRAM and Egg's Nest around Bulawayo. Another arms cache was found near Wha Wha prison in Gweru. Up to its dissolution in 1987, ZAPU denied having any connections with the arms caches. Some argue that the arms were hidden by the Central Intelligence Organisation (CIO) who wanted to implicate ZAPU in internal disturbances of the 1980s. That ZANU wanted a *casus belli* to destroy ZAPU was very apparent as they continually tried to associate Joshua Nkomo with the dissidents. In Zimbabwe under ZANU-PF, political opponents are commonly associated either with the intention to stage a coup, violently destabilise the country or assassinate Robert Mugabe. First, it was Joshua Nkomo and ZAPU, next it was Bishop Muzorewa, third it was Ndabaningi Sithole and now it is Morgan Tsvangirai and the MDC. At the time of writing this paper, ZANU-PF government is talking about having found arms caches in Manicaland and they are frantically trying to link MDC to these weapons. Many people think it is the work of the CIO.

conducted, targeting former ZIPRA combatants serving in the national army. Some terrified former ZIPRA combatants fled from the army to the bush, leading to swelling of ranks of the so-called 'dissidents'. ZANU-PF found the needed pretext to deal once and for all with PF-ZAPU and ZIPRA. The fiery ZANU-PF cabinet minister, Enos Nkala, told a rally in Bulawayo that his party's task 'from now is to crush Joshua Nkomo' whom he castigated as a 'self-proclaimed Ndebele king'. From then onwards, Joshua Nkomo lost the title of 'Father Zimbabwe' and was given a new title, 'Father of Dissidents'. His colleague in cabinet, Edgar Tekere, openly stated that he has been working to destroy PF-ZAPU and Joshua Nkomo since 1962 (*The Herald*, 4 July 1982).

From as early as 1981 ZANU-PF leadership was already busy building a partisan and highly politicised military force. There were two major justifications for it. First was the South African threat. Second was the existence of dissidents. While no one would deny that the dissidents needed to be dealt with, the questionable issue was whether this dissident menace required the building of another brigade on top of the integrated ZNA. The reality is that by this time Zimbabwe had excess military units to deal effectively with the dissidents. Was a specially trained brigade really needed? On 13 August 1981, Prime Minister Mugabe announced that a new military formation to be called '5-Brigade' was being raised to be used 'purely for the purposes of defence and not for use outside the country'. It would be used 'solely to deal with dissidents and any other troubles in the country' (Stiff 2000:93).

The formation of the Fifth Brigade (later to be known as *Gukurahundi*) marked the beginning of politicisation of the Zimbabwean military forces. The Fifth Brigade became a purely ZANU-PF army, operating outside the rank and file of the ZNA and directly answerable to Robert Mugabe. Mugabe clearly stated that 'they [Fifth Brigade] were trained by the North Koreans because we wanted one arm of the army to have a political orientation which stems from our philosophy as ZANU-PF' (Stiff 2000:93). Also, the formation of the Fifth Brigade marked the beginning of the ethnicisation of the Zimbabwean military forces. The Brigade was composed of former ZANLA elements and they all came from the Shona-speaking group in Zimbabwe.⁵ It must be noted that ZANU-PF enjoyed widespread support in Mashonaland. So this army was drawn from its base.

In the ranks of the ZNA, *Shonalisation* was taking place. The former ZIPRA

and Rhodesian forces were demobilised in large numbers, leaving ex-ZANLA in place. Some ZIPRA who wanted to serve their country in the capacity of soldiers were harassed and threatened with death. Some just disappeared while serving in the ZNA. This forced more ZIPRA forces to demobilise (Interview with Jervious Moyo, ex-ZIPRA). Numerous incidents indicated the purging of ex-ZIPRA from the ZNA. A confidential British Military Advisory and Training Team (BMATT) document refers to the removal in August 1982 of ZIPRA from the Mechanized Battalion, a battalion in Second Brigade led by ZANLA's Agnew Kambeu. The report states that: 'The battalion was well integrated with 33 percent each of Former Army/ZANLA/ZIPRA and had a high standard of operational capability coupled with sensible and constructive training. However last month all ZIPRA elements (some 250) were removed and sent elsewhere which had reduced the battalion to a fairly poor state although the Former Army company is apparently still [in] being and tends to be used for demonstrations' (Annex C to BMATT/1406, 3 September 1982). Norma J. Kriger's book, *Guerrilla Veterans in Post-War Zimbabwe: Symbolic and Violent Politics, 1980-1987*, is full of details on the purging of ZIPRA from the ZNA (Kriger 2003). Chitiyo and Rupiya (2005) also confirm the purging of ZIPRA which they trace to the arrest of ex-ZIPRA Commanders; Dumiso Dabengwa and Lookout Masuku in 1982, the removal of ZAPU officials from Cabinet in February 1982, which led to the collapse of the tripartite military power-sharing arrangement mooted in April 1980. Now only ZANLA senior cadres remained. Chitiyo and Rupiya (2005:341) add that: 'Much more significantly, from henceforth there was little to stop the full implementation of a factionally based security policy in the country'.⁶

Unlike the South African Defence Force (SADF) that has continued to

5 In 2002, I participated in a research project sponsored by the Institute for Security Studies (SA) and the Centre for Defence Studies (Zimbabwe) on civil-military relations and defence transformation in Southern Africa. I did field work in Matebeleland region focusing on Ndebele perceptions of the military. There was overwhelming evidence that the Fifth Brigade that killed an estimated 20 000 civilians was Shona speaking. In some instances people mentioned that the Fifth Brigade itself told people that it was a Shona army sent to wipe out the Ndebele for what they did in Mashonaland in the 19th Century. See Ndlovu-Gatsheni 2003.

reflect the heterogeneous nature of the country after the fall of Apartheid, the ZNA quickly assumed a Shona dominance. There was no attempt at ethnic balancing in the military forces. Ethnicisation went in tandem with politicisation, leading to the emergence of a feared military force in Zimbabwe. Zimbabwean military forces are not a people's army at all. The civilians fear their military forces (Ndlovu-Gatsheni 2003). The military has been used to harass and kill the people of Matebeleland (1982-1987). University students and workers know the violence of the Zimbabwean military forces – be it the army or the police, they are both violent.

The Constitution, Military Forces and Civilians in Zimbabwe

Morgan Tsvangirai's letter quoted at the beginning of this paper alluded to the violation of the constitution by President Robert Mugabe as the Commander-in-Chief of the Zimbabwe Defence Forces. The claim made by Tsvangirai was that the army was misused by Mugabe in a power game. This provoked the need to analyse the constitutional framework governing the command-and-control of the army.

The 1997 revised National Defence Policy contains a clear hierarchy of governance, command and control of the military. President Robert Mugabe is the Commander-in-Chief of the ZDF and he chairs the State Defence Council.

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- 6 After the Unity Accord of 22 December 1987, many ex-ZIPRA combatants who were unfairly dismissed from ZNA during the early 1980s tried to re-join the army indicating that they did not leave on their own volition. A certain Mr. Gibbs Sibanda (not his real name) who now runs a bottle store and is a member of the Zimbabwe War Veterans Association and an ex-ZIPRA, told me that he was a Captain in the then Army and was based in Battle Fields near Kwe Kwe in 1982. He narrated how he left the army. He said one day he was approached by two ex-ZANLA colleagues who asked him whether he still wanted to remain alive. His answer was 'yes'. He was then told that the position of Captain he was holding was only for ex-ZANLA forces, not ZIPRA. He was told to relinquish the post and to apply for demobilisation. Two of his colleagues who refused to demobilise just disappeared up to today.

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The whole structure is presented in Figure 7 on page 70. The State Defence Council is the highest body responsible for national security affairs and its meetings are attended by ministers of defence, home affairs, foreign affairs and finance, as well as the commander of defence forces and the secretary for defence (Chitiyo & Rupiya 2005:347).

The constitutional framework guiding the ZDF is the national Constitution which underpinned the defence policies. It was elaborated further by the Defence Act. The Constitution provided a clear mechanism for superiority of civilian control over the military as well as public accountability of the military. The National Defence Policy makes it clear that ‘...civilian military relations refer to the hierarchy of authority between the Executive, Parliament and the Defence Force. A cardinal principle is that the Defence Force is subordinate to the civilian authority...’ (Government of Zimbabwe 1997:20).

According to the National Defence Policy, the civilian political authorities formulate defence policy and remain responsible for the political dimensions of defence, while the military executes that policy. It is also clearly stated that the civilian political authorities must respect military autonomy through non-interference with the operational chain of command and application of the military code of discipline. The president’s powers as Commander-in-Chief are:

- Determining the operational use of defence forces
- Determining the execution of military action
- Declaring of war
- Making peace

The President has power to appoint the Commander of the armed forces, and every commander of a branch of the defence forces, after consultation with a person or authority prescribed by or under an act of parliament. The President also appoints the Minister of Defence as the manager of the daily political functions of the military, and to whom the commanders report, except when they report directly to the President in cases of emergency (Government of Zimbabwe 1997).

The parliament constitutes a vital military management structure and mechanism in that the ZDF structures are established by acts of parliament. Parliament makes provision for the organisation, administration and discipline

Figure 7: Management of Defence Forces in Zimbabwe

Structure	Members	Functions
Defence Council	<ul style="list-style-type: none"> • Commander-in-Chief (Chairman). • Minister of Defence. • Minister of Foreign Affairs. • Minister of State Security. • Minister of Home Affairs. • Minister of Finance. • Commander of Defence forces. 	<ul style="list-style-type: none"> • Formulate national security and strategy. • Formulate defence policy. • Determine internal and external operations. • Formulate commitments and review budget. • Supervise Defence Committee.
Defence Committee	<ul style="list-style-type: none"> • Minister of Defence • Commander of the Zimbabwe National Army (ZNA). • Commander of the Air Force of Zimbabwe. • Secretary for Defence. 	<ul style="list-style-type: none"> • Implement national security and defence strategy. • Define and regulate defence policy. • Procure strategic defence equipment. • Review defence policy, budget and management policies. • Assess the security environment.
Defence Co-ordinating Committee	<ul style="list-style-type: none"> • Commander of Defence Forces. • Secretary for Defence. • Commander of ZNA. • All Chiefs of Staff at Zimbabwe Defence Force Headquarters. • All Chiefs of Staff at Service Headquarters. • All Department Secretaries at Minister of Defence. • All Defence Groups at Minister of Defence. 	<ul style="list-style-type: none"> • Implement system of defence issues. • Daily management of defence aspects. • Liaison with other ministries.

Source: Government of Zimbabwe 1997.

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of defence forces. Therefore ZDF is subject to the security and administration of regulatory parliamentary committees such as budget, public accounts and security. The judiciary comes in in cases of civil suits against the military (Chitiyo & Rupiya 2005:350).

According to the Zimbabwean constitution, military personnel are prohibited from active participation in politics. They are not allowed to hold office in any political party/political organisation. However, they can exercise their democratic right to vote as individuals (Constitution of the Republic of Zimbabwe).

The Third Chimurenga and Involvement of the Military in Politics

Despite the existence of noble legal and constitutional provisions for civilian control of the military and clear demarcation of military and political issues, the war-time civil-military relations legacy continued to subvert these structures. During the time of the liberation war, the military wings and the political parties were integrated into one politico-military organisation as represented in Figures 2-5 in this paper. Chitiyo and Rupiya (2005:350) noted that the ideology that political power comes from the barrel of the gun and that the gun is subordinate to the former is a notion that has since been transferred to the present governmental authority without fundamental re-orientation. This nationalist thinking was well articulated by Robert Mugabe long ago in 1976 when he tried to define the role of the military vis-à-vis electoral democracy. He said:

Our votes must go together with our guns; after all, any vote we shall have, shall have been the product of the gun. The gun, which produces the votes, should remain its security officer, its guarantor. The people's vote and the people's guns are always inseparable twins (Quoted in Maroleng 2005a:12).

According to Chitiyo and Rupiya, several generals are represented in the politburo, central committee or other ZANU-PF party structures. All this does not augur well for a professional and autonomous military and has far-reaching

implications for democracy. Allying guns and votes symbolises a violent conception of electoral democracy.

The periods leading to the general elections of 2000 and presidential elections of 2002 were dominated by clear military intervention in civil affairs on behalf of the ZANU-PF regime. The reconstituted and rejuvenated war veterans association came into the centre stage of Zimbabwean politics. Its leaders gained access to the deadly military arms, which they enthusiastically used to intimidate people, while some of them even shot and injured civilians over political scores.⁷ The war veterans operated outside the purview of the Zimbabwean laws and were given a free hand to deal in any manner with those assumed to be opposed to ZANU-PF rule.

The fast-track land reform programme was spearheaded by the war veterans and was characterised by some of the most gruesome activities and atrocities. Some commercial farmers were shot in cold blood by people who supposedly had no right to use firearms. The war veterans set up detention and torture centres in the occupied farms where they dealt cruelly with anybody they suspected to be supporting the opposition party (Movement for Democratic Change, MDC).

The other group that entered the centre stage of politics in Zimbabwe was that of the Youth Militias (derogatively termed the *Green Bombers* due to their greenish military-style uniforms). The Militias, just like the war veterans, operated like Robert Mugabe and ZANU-PF's storm troopers. They acted as the party's eyes and ears. They erected roadblocks where they harassed people; asking them to produce ZANU-PF party cards as their travel and life passports in Zimbabwe. The National Youth Training Centres were established throughout the country and as stated by *The Herald* of 28 January 2002, the aim was 'to instill unbiased history of Zimbabwe' on all school leavers. According to the Solidarity Trust, teaching in the youth centres was crudely rudimentary and it elaborated that:

7 The self-proclaimed leader of the farm invasions, Joseph Chinotimba, shot his neighbour in Glen Narah, Harare, accusing the woman of being a supporter of the MDC. He was never prosecuted.

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...there is overwhelming evidence that the youth militia camps are aimed at forcing on all school leavers a ZANU/PF view of Zimbabwean history and the present. All training materials in the camps have, from inception, consisted exclusively of ZANU/PF campaign materials and political speeches. This material is crudely racist and vilifies the major opposition party in the country.... The propaganda in the training camps appears to be crude in the extreme. One defected youth reported how war veterans told trainees that if anyone voted for the MDC, then the whites would take over the country again.... A youth militia history manual called 'Inside the Third Chimurenga' gives an idea of the type of 'patriotism' that is instilled in the camps. The manual is historically simplistic and racist and glorifies recent ZANU/PF National Heroes along with the land resettlement. It consists entirely of speeches made by President Robert Mugabe since 2000, among them addresses to ZANU/PF party congresses, his speech after the 2000 election result, and funeral orations for deceased ZANU/PF heroes... (Solidarity Peace Trust 2003).

The trained youth ended up as warriors of the *Third Chimurenga*. They became very active during the past election times where they openly engaged in harassment of those considered to be anti-ZANU-PF. The police and the army either stood by or assisted these irregular forces in the harassment of the civilian population. The army and the police's connivance at the violence of the state and its direct interference in civil life and politics came out clearly toward the 2002 presidential elections. The military leaders, comprising commanders of the Zimbabwe Defence Forces (ZDF), Zimbabwe Republic Police (ZRP), Zimbabwe Prison Services, and the Secret Service, led by General Vitalis Zvinavashe, issued a televised message to the people of Zimbabwe to the effect that they would never salute any leader (elected by the people) who had no liberation credentials. The incumbent leader of Zimbabwe, Robert Mugabe, clearly had liberation credentials as a former guerrilla leader of ZANU and ZANLA in the 1970s's liberation war. However, his opponent and competitor in the run up to the presidential elections, Morgan Tsvangirai of MDC, had no clear liberation war credentials. So the military chiefs were vowing that even if he was going to win presidential elections, they were not going to salute him as the new

president of the country. Their statement was a masked coup d'état threat in the event of the MDC winning elections.

Prior to the general elections of 2000, the war veterans continuously threatened the Zimbabwean populace with its 'song of going back to the bush' if ZANU-PF lost the elections. This was not a new ZANU-PF election strategy. In the first democratic elections of 1980, ZANU-PF in alliance with its ZANLA military wing already threatened the people that if ZANU-PF lost the elections, they were 'going back to the bush' (Stiff 2000).

The Zimbabwe army commander, Constantine Chiwenga (a successor to Vitalis Zvinavashe), directly drummed up support among soldiers for President Robert Mugabe's re-election in 2002. He toured almost all army barracks urging soldiers to rally behind ZANU-PF to thwart a possible victory by Morgan Tsvangirai, the MDC leader (*The Financial Gazette*, 31 May 2001).

Zimbabwe's top hierarchy in the defence force is exclusively dominated by Mugabe loyalists that included General Solomon Mujuru, General Vitalis Zvinavashe, Air Marshall Perence Shiri and General Chiwenga. All these men fought as senior members of ZANLA, the military wing of ZANU-PF during the liberation struggle. In other words, these military leaders are just as nationalist in ideological orientation as the civilian leadership of ZANU-PF. They are 'nationalists in uniforms' whose loyalty to ZANU-PF as a party is beyond question. The most disturbing issue is that the majority of these men also hail from the Zezuru sub-Shona ethnic group where President Robert Mugabe comes from. This amplifies a worse form of ethnicisation of the military which is even more dangerous than politicisation.

The above scenario at the top level of the military forces explains the solidity of the nationalist-military alliance. The question that needs to be answered is: What devices have been used by the ZANU-PF civilian regime to strike such a solid and enduring deal with the military forces?

Techniques of Creating a Nationalist-Military Oligarchy in Zimbabwe

Several devices have been utilised to create the nationalist-military oligarchy in Zimbabwe.

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- **Ethnic Factor** – This technique has been used widely in post-colonial Africa where the post-colonial state is a conglomeration of different ethnic groups with doubtful loyalty to the ruling elite. The Zimbabwean army is today dominated by the Shona ethnic group. The top leadership is derived from President Mugabe's Zezuru ethnic group. This creates an enduring loyalty to the party and its leadership derived not only from ethnic affiliation but also from 'home-boyism'. Despite the fact that General Philip Sibanda, an ex-ZIPRA combatant and a Karanga, has been appointed the head of the ZNA, he is surrounded by not only Shona but Zezuru loyalists of Mugabe. The issue of the dominance of the Zezuru ethnic group in the top posts in the military emerged together with the debate on succession and the so-called Tsholotsho Declaration, leading Chris Maroleng of the Institute for Security Studies (ISS) to write of 'Zimbabwe's Zezuru Sum Game' (Maroleng 2005b). The argument is that President Robert Mugabe is Zezuru and the first Army General Solomon Mujuru is also Zezuru and Mugabe has appointed the wife of Gen. Mujuru as his first Vice-President ahead of Emmerson Mnangagwa (a Karanga) who was seen by others as the logical successor to Mugabe based on his loyalty and impressive liberation war credentials as well as post-independence political career. What Chris Maroleng terms the 'Zezuru Sum Game' is simply interpreted as a move by Mugabe and his Zezuru associates to establish a fiefdom through gaining total political dominance in key institutions including the army, thus elbowing the Karanga faction from power. As it stands today, the seniority structure in the army is evident in Figure 8 on page 76.
- **Instrumental Pay-Offs** – The ruling party has succeeded in 'buying' the loyalty of the military through selective material payments and privileges. The top leadership of the army is well accommodated, given good cars and they benefited from the land reform programme ahead of the landless peasants.
- **Political Co-optation** – Senior members of the military work together with the civilian members of the government. Some retire into being members of parliament, governors and party-political functionaries. Those who participated in the liberation struggle are considered to be the ears and eyes of ZANU-PF wherever they are. All war veterans have been turned into party

Figure 8: Senior Military Personnel in Zimbabwe



Source: Constructed by the author.

functionaries. The ZANU-PF government has increasingly used the military in civilian activities. The widely criticised *Operation Murambatsvina* was conducted by the military. Military and security personnel have been placed in several top-level positions in civilian institutions. At the helm of the Electoral Supervisory Commission (ESC), the Grain Marketing Board (GMB) and the National Oil Company of Zimbabwe (NOCZIM) are military people. This has made the military to perceive themselves as more than the custodians of Zimbabwean territorial integrity and sovereignty from external threats. They see themselves as some *Praetorian Guard* that must safeguard ZANU-PF's political dominance (Maroleng 2005:5). Some analysts even argue that ZANU-PF and Robert Mugabe's heavy reliance on the military means that this is the only institution they can trust at the moment (Chitiyo & Rupiya 2005).

- **Ideological Indoctrination** – The Zimbabwean armed forces are deliberately indoctrinated with the values of ZANU-PF as a party. All the

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high ranking members of the military forces are expected to be members of ZANU-PF. As it stands today, the military is led by those who passed through the nationalist liberation war and who are thoroughly indoctrinated with ZANU-PF nationalist ideology. National Service Militias are another group of indoctrinated people who are now being recruited into joining the army and police.

Conclusion

The Zimbabwean military see themselves, first and foremost, as the servants of ZANU-PF and the particular ZANU-PF constructed regime, rather than servants of the state and the people. Political detachment and neutralism were rendered meaningless by political manipulation and were replaced by an ethos in which enthusiasm for the existing ZANU-PF regime becomes an essential quality in a military officer. This is vindicated by the enthusiasm displayed by both the police and army officers in harassing workers and civilian population during strikes, and other civil events deemed anti-ZANU-PF. Army units, particularly in Harare, kept track of those who were assumed to have voted for the MDC in the 2000 and 2002 elections and subjected them to various forms of harassment and beatings in the post-election period. Up to the time of writing, Zimbabweans stay in fear of their military forces.

Zimbabwe is reeling under a re-radicalised nationalist project presided over by ZANU-PF with the support of the military forces. The Zimbabwean state is militarised in form and content. There is a solid alliance between the war veterans and the ruling party, between the Youth Militias and the ruling party, and between the ZNA and ZRP and the ruling party. The commissioner of the police, Augustine Chihuri, openly stated that he was a ZANU-PF member (*The Daily News*, 5 September 2001).

The post-nationalist alternative represented by the MDC and the various civic groups such as the National Constitutional Assembly (NCA) has been beaten back by this solid nationalist-military alliance in Zimbabwe. This has so far enabled the old forces of the nationalist liberation struggle to temporarily dislocate and displace the pro-democracy elements in the country.

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An Analysis of the Problems of the Labour Dispute Resolution System in South Africa

*Hanneli Bendeman**

Abstract

The labour dispute resolution system is currently under strain, as is evident from numerous reports about the problems experienced by the Commission for Conciliation, Mediation and Arbitration (CCMA). Even though the Labour Relations Act 66/95 (LRA) has brought statutory dispute resolution within reach of the ordinary worker, it might actually have compounded the problems relating to dispute resolution in the country. The high rate of individual unfair dismissal cases referred to the CCMA is an indication that the adversarialism that used to be found in the collective relationship has now manifested itself in the individual relationship.

This article focuses on the findings and recommendations of a study that was done to explore the perceptions of commissioners of the CCMA regarding

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the capacity of parties to effectively deal with labour conflict and disputes within the legal framework provided by the LRA. This includes an investigation into the reasons for the high referral rate of unfair dismissal cases to the CCMA and recommendations made by the commissioners on how to deal with the problems.

It was found that the LRA created a sophisticated system of dispute resolution in which most of the role players are not capacitated to operate. The guidelines in Schedule 8 of the LRA have become the norm for dealing with conflict within an enterprise, creating complex and technical processes for dealing with disputes. However, most of the employers and individual employees do not have the knowledge and skills to operate effectively in the system. This has led to a new type of adversarialism in the individual employment relationship, which is based on rights, rules and power. The very technical nature of the internal conflict resolution mechanisms, the incapacity of the parties and the adversarial nature of the labour relationship have resulted in the high referral rate and consequent problems that the CCMA is experiencing. Changes to the LRA regarding the pre-dismissal arbitration process and the conciliation-arbitration (con-arb) process could be seen as treating only the symptoms and not the causes of workplace conflict and an unhealthy labour dispute resolution system.

1. Introduction

After ten years of democracy it is appropriate to reflect on some of the institutions that were created in the process of transformation in the South African labour relations system. The Commission for Conciliation, Mediation and Arbitration (CCMA) is one such institution that was created with high expectations.

The importance of the promotion of effective dispute resolution was emphasised as one of the four primary objectives of the Labour Relations Act 66/95 (LRA) (Gon 1997:23) and the CCMA was seen to be the pillar of the new dispute resolution dispensation that had been ushered in by the LRA (CCMA 1996:4). It was also anticipated that the LRA, the Basic Conditions of Employment Act (75/97) and the Employment Equity Act (55/98) would form the pillars upon which economic and social justice will prevail and that workers

will have their dignity restored (Moyane 2002:10).

However, it is clear that the dispute resolution system is currently under strain, as is evident from numerous reports about the problems experienced by the CCMA. Even though the LRA has brought statutory dispute resolution within reach of the ordinary worker, it might actually have compounded the problems relating to dispute resolution in the country (Le Roux et al 1997:12).

After having been exposed to the conciliation process at the CCMA since 1997, I came to the conclusion that the parties to the dispute resolution process are not equipped to effectively function within the system created by the LRA. The guidelines in Schedule 8 of the LRA have evolved into a yardstick used during conciliation, mediation and arbitration against which the actions of the parties are measured to determine substantive and procedural fairness. This has created a codified set of rights and obligations and has caused a thorough knowledge of the Schedule 8 requirements or the LRA and the CCMA rules (Republic of South Africa 2002) to be essential for the effective utilisation of the CCMA's dispute resolution processes (Daphne 2001:10). During the conciliation it often becomes clear that one of the parties has omitted one or more of the quite sophisticated rules or procedures while dealing with the conflict that gave rise to the dispute. Employers are, for example, then penalised for this oversight by having to reinstate the employee(s) or pay compensation. By the time the dispute gets to conciliation a lot of irreversible damage has been done to the relationship making reinstatement very difficult.

2. Aims of the Commission for Conciliation, Mediation and Arbitration (CCMA)

To enable one to evaluate the dispute resolution system, it is necessary to reflect on the aims of the CCMA and ask the question as to whether the CCMA has achieved its objectives.

- **Establishing credibility:** One of the objectives of the labour reform of the 1990s was the establishment of credible institutions that have the support of business, labour and government (Nupen & Cheadle 2001:117).

- **Moving away from adversarialism:** The LRA encapsulated the new government's aims to reconstruct and democratise the economy and society in the labour relations arena. It therefore introduced new institutions with the intention of giving employers and workers an opportunity to break with the intense adversarialism that characterised labour relations in the past (Du Toit et al 1999:3).
- **Providing expeditiousness:** The new dispute resolution institutions aimed to provide a proactive and expeditious dispute resolution system available to all workers (Robertson 1995:67).
- **Providing cost effective services:** The main objective of the CCMA is to provide a cost effective dispute resolution service to the labour relations community. It was foreseen that the CCMA should also play a role in dispute prevention (Hobo 1999:28).
- **Ensuring resolution at conciliation:** It was intended that as many disputes as possible should be resolved through conciliation, resulting in a minority of disputes going to arbitration or the Labour Court.

The intention was to create a less adversarial labour relations system based on interests and alternative dispute resolution mechanisms and a relationship based on conflict competence, the effective management of conflict and the prevention of disputes.

3. Problems of the CCMA

As mentioned above, the guidelines contained in Schedule 8 of the LRA have assumed the character of a codified set of rights and obligations and have made the labour relationship more adversarial than before, not less (Mischke 1997b:101). However, the adversarialism that used to be found in the collective relationship has now manifested itself in the individual relationship. This can be deduced from the high rate of individual unfair dismissal cases which have been referred to the CCMA and which have caused the case overload.

The realities of the South African labour market are that a large percentage of employees have no, or little schooling and that the largest proportion of

employers are in small to medium sized business with practically no skills or training in labour relations and labour law (Landman 2001:76, Theron & Godfrey 2001:8). It could thus be assumed that most of the parties affected by the above-mentioned rules and regulations are not equipped to deal with and make proper use of this very sophisticated system that has been created (Healy 2002:4).

It has further become evident that the processes at the CCMA are not as expeditious as was hoped for and that many disputes are referred to arbitration and not settled at conciliation as was intended.

Although a system was created where anybody can pursue a labour dispute without any costs involved in bringing the dispute to the CCMA and without the necessity of legal representation, the question should, however, be asked if it is really achieving the above-mentioned objectives (Healy 2002:4).

Some of the theoretical assertions underlying this research need to be discussed.

4. Theoretical Assertions

The LRA created a sophisticated system of dispute resolution in which most of the role players are not capacitated to operate. This gave rise to an excessively high rate of referrals of individual unfair dismissal disputes to the CCMA, creating instability in the system. To compensate for this instability, and in particular the incapacity among employers and employees, a new phenomenon emerged in the form of labour consultants and labour lawyers being involved in dispute resolution. This is significant if viewed against the contrary intention of the LRA to simplify the process of dispute resolution.

It is against this background that the following assertions are made:

- Dispute resolution in South Africa has fallen prey to a process of technicalisation common to a post-industrial society. However, South Africa has been classified, by the International Finance Corporation and the World Bank, as an emerging market economy (SEI Investments 1997:4). The very technical nature of the labour relations system is thus inappropriate for the labour relationship in South Africa.

- The dispute resolution system is based on the acceptance of conflict and the utilisation of mechanisms and processes to deal with the conflict as soon as possible. However, the parties still view conflict as negative and attempt to avoid conflict rather than to deal with it as soon as possible. This belief makes the application of the statutory dispute resolution mechanisms and procedures very difficult.
- The very technical nature of dispute resolution prevents parties from seeking alternative dispute resolution options. The labour relationship has been reduced to a process of following rules and regulations, while other characteristics of a healthy relationship, such as trust and loyalty, have been made more or less irrelevant.
- Labour lawyers and labour consultants have assumed a very important position in the dispute resolution system of South Africa, especially where individual labour disputes are concerned. Their importance in the labour relations system has increased over the past few years despite legislative attempts to keep them out of the processes.

The open system approach to labour relations holds that any system will change in an effort to deal with structural strain and to maintain stability (Craig 1981:18). The problems that have plagued the CCMA over the past few years, such as the high referral rate, case overload, low settlement rate, capacity crises and bad management, have exerted strain on the dispute resolution system. The inability of parties to deal with conflict in their organisations has contributed to the high referral rate and has further increased the strain on the dispute resolution system (Israelstam 2003:2).

The next section focuses on perceptions of CCMA commissioners regarding some of the most pressing problems experienced by the CCMA.

5. Perceptions of CCMA Commissioners

The CCMA commissioners are the representatives of the state tasked with the resolution of these disputes. They are trained and well aware of the sophisticated rules and technicalities involved in conflict resolution, and they

are caught up on a daily basis in having to deal with the incapacity of employer and employee parties.

A study was done during 2003 to explore the experiences and perceptions of CCMA commissioners regarding the problems with the dispute resolution system in an attempt to establish how the system tries to cope with the strain.

This study focused only on the problems in the Gauteng region of the CCMA. The reason for this was that the Gauteng region had the highest referral rate (36% of all cases referred to the CCMA during the 2001/2002 period were in Gauteng) and the lowest settlement rate (47% compared to more than 60% at the national level).

The data were collected through two methods: a structured personal interview (mostly the part-time commissioners) and an e-mail questionnaire (mostly full-time commissioners). The questions in the interview schedule covered the same issues that were dealt with in the questionnaire. Interviews were conducted with eleven commissioners and e-mail questionnaires were received from fifteen commissioners.

6. Reasons for the High Referral Rate

Respondents were asked to provide reasons, from their perspectives, for the high referral rate. The reasons mentioned by them can be divided into five categories.

6.1 Reasons for the high referral rate

The *first* category deals with the *ease of access* to the CCMA. It was mentioned that the CCMA is very accessible, that there are no costs involved in bringing a case to the CCMA, there are no consequences for referring a frivolous dispute, and that unions refer all cases and do not make a distinction between cases with merit and those without. This is in line with the CCMA's findings that there was less emphasis on dispute prevention in the past because the primary focus was on dispute resolution (CCMA 2002:2).

The *second* category involves the *high expectations* of applicants, specifically their perception that one will always get some kind of compensation irrespective

of the merits of the case. Some commissioners compare these perceptions of applicants to viewing the CCMA as ‘a one arm bandit’, ‘lottery’ or ‘an ATM machine’ where one has to press the right buttons and money will be thrown at them.

The *third* category refers to the fact that applicants do not have *knowledge* of the system or their rights and obligations, and are poorly advised by trade unions, labour consultants and the Department of Labour, who lead them to believe that they have a good case and that they should pursue the matter further at the CCMA. In this regard the CCMA had embarked on a project in the retail sector to prepare training material and present best practices workshops (CCMA 2000:9).

The *fourth* category encapsulates reasons pertaining to the poor *economic climate*, the high unemployment rate and poverty. It is argued that employees struggle to find employment and refer their case to the CCMA in the hope that there might be some kind of financial compensation forthcoming even if it is so-called ‘nuisance money’ that the employer is prepared to pay just to get rid of the dispute.

The *fifth* category deals with *employers’ lack of knowledge* of labour legislation, a disregard for substantive and procedural requirements for fairness and the fact that it is easy to replace dismissed workers. It is also mentioned that employers are ignorant of their responsibilities, and that they do not have, or do not use internal grievance and disciplinary procedures.

The high referral rate can be viewed as an indication of ‘a *pathology of conflict*’ in the labour relationship, which could be the result of a very paternalistic approach to human resources in the workplace. It should be kept in mind that the high case load is also the result of the *enormous jurisdiction* that was given to the CCMA by the inclusion of the former ‘homelands’, the extension of the LRA to the public service and various other pieces of new legislation adding to the responsibilities of the CCMA.

6.2 Solutions offered by Commissioners to the problem of high referral rates

The respondents offered far-reaching solutions to the problem of the high referral rate of individual unfair dismissal cases. The *most* important solution

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that was offered, involves the payment of some sort of a *referral fee*:

- The one option is that a *revenue stamp* should be required on the referral form: 'Each referral should have a R20.00 revenue stamp, same as a Magistrate's Court summons and reviewed on a similar basis to discourage frivolous claims and abuse of the system.'
- Another option is that both parties should pay an *initial fee* calculated as a percentage of the employee's salary. If the parties settle at conciliation, they both get their portion of the fee back. If not, then the party against whom the arbitration award is given, forfeits his or her portion of the fee.
- More *cost orders* should be made for frivolous and vexatious referrals and these costs must be enforced more strictly.
- There was a suggestion that employers must be fined for procedural unfairness.
- It was also suggested that all employees earning more than R8 000.00 per month should be charged a fee to use the CCMA's services.

Some commissioners were adamant that there should be *no costs* involved in referring a dispute to the CCMA: '[I]n our society with the high incidence of illiteracy and low level workers, unemployment and poverty, there is a need for a very accessible system ... I also do not think that so many of the cases are frivolous. Maybe from the employer's side but not for that employee who has to travel for miles by taxi to come and tell his or her sad story in the hope of a month's poverty wages.'

The *second* important solution to the problem of the high referral rate was the *training and education* of employers, employees and trade union representatives. Awareness levels should be increased and problematic sectors should be targeted for information sharing and training. This training should include requirements for substantive and procedural fairness in internal mechanisms and processes as well as training in the rights and obligations of employers, employees and trade unions.

- It was suggested that the CCMA compile a small booklet with basic information about what can be expected at the CCMA and what types of cases

do not have merits. These booklets should be available in all the official languages and should be handed out with the referral forms to prospective applicants, with the instruction that these booklets must be scrutinised before referring a dispute.’

The *third* category of solutions involved the use of *advisory forums* such as Legal Aid Centres where more professional advice can be given with regard to the merits of cases. It was suggested that prospective applicants should receive more realistic and professional advice on the merits of their cases.

- A suggestion was made that these advisory forums, including the CCMA help desk, should provide qualified reports on the merits of a case before it is referred. If it is found in arbitration that the case was pursued in spite of the fact that the report stated that the case had no merits, some sort of a penalty could be invoked – it is not clear if this is in addition to a cost order or not.
- Another suggestion was the appointment of a special tribunal by the Department of Labour to deal specifically with domestic workers’ cases as these cases are ‘clogging up the system’. The Department of Labour could institute a similar tribunal for individual retrenchments.

The respondents emphasised the benefits and successes of the conciliation and arbitration ‘*case rolls*’ to deal with the high referral rate. The ‘case roll’ refers to a practice where parties are informed that their cases will be heard on a specific day at nine, twelve or two o’clock. There is a group of commissioners that take the cases as they are called, and if parties are not there they call the next one. This is normally done to deal with the arbitration backlog. The commissioners suggested that this should be standard practice.

The merits of the *pre-mediation screening process* for reducing the high referral rate were emphasised. When an applicant comes to the CCMA to refer a dispute there is a practice where a commissioner will contact the respondent and attempt to do ‘telephone conciliation’. These commissioners should be specifically trained in telephone skills. Case management personnel should not do the screening of cases, as it requires the skill and knowledge of commissioners

to decide on the type of dispute, jurisdiction, complexity and time allocation of a dispute.

Another suggestion was that powerful mass media such as Yiso Yiso or Isidingo should be used to increase public awareness of the CCMA. 'It is amazing that one still finds, eight years down the line, people still do not know what the CCMA is doing...'

An option was mentioned where employers should be allowed to dismiss workers at will, with or without just cause, provided that he or she pays *compensation* equal to the amount of say, three months' salary. If the employer does not pay this compensation, the employee can challenge the dismissal and claim reinstatement. By doing this, the emphasis is on reinstatement and not on financial compensation.

A different system, similar to the *Small Claims Court* should be looked at, for small labour issues ('small' being determined by the monetary value of the claim). It needs to be a state run system but it does not mean that the state cannot outsource. This system would take care of most of the individual unfair dismissal cases that clog up the CCMA at present.

It should be remembered that the historical imbalances in the workplace resulted in employees questioning the motives and fairness of the employers. There is not enough communication and transparency to create *trust and credibility* that is needed in the labour relationship. 'Once employees start to view the internal procedures as credible, and buy into it, then the referral rates might come down....'

7. Impact of Ineffective Internal Conflict Resolution on the Referral Rate

The way in which a grievance is dealt with internally will have an impact on the way in which a dispute is formulated and referred.

7.1 The importance of proper internal mechanisms to deal with conflict

The mechanisms or tools for dealing with conflict in the workplace are the grievance and disciplinary procedures. If these mechanisms are used

effectively, it could mean that very few disputes would escalate to a level where they need to be referred to a third party for resolution. The tendency in the past has been to view conflict, from a unitarist perspective, as negative and destructive to the work relationship. The pluralist approach, however, is based on the acceptance and proper management of conflict by means of effective procedures and mechanisms to deal with conflict as soon as it manifests itself in the workplace, and to do so at the lowest level and as speedily as possible (Grossett & Venter 1998:294).

The fact that so many disputes are referred to the CCMA for conciliation could be an indication that the internal conflict resolution mechanisms are not used properly or fully understood in a specific organisation. The dispute resolution system should attempt to deal with conflict at a low level before it escalates and becomes highly formalised disputes (Mischke 1997a:11).

The more formalised the conflict, the more careful it should be dealt with as the damages to the parties increase. If the conflict is detected in a latent phase, that is, before it becomes visible, it can be dealt with through proper communication, motivation, and sensitivity training (Gerber et al 1998:331). Once it has reached the grievance phase, it usually involves company time and money to resolve the grievance since senior management is involved in the procedure and inquiries.

Once conflict has become visible in the workplace (manifest conflict) certain mechanisms and procedures must be available to deal with conflict in a simple and expeditious manner. Conflict between employers and employees has been institutionalised in modern industrial relations in terms of agreed upon sets of rules and procedures (Haralambos 1982:263). If the conflict can be resolved in terms of an agreed upon set of rules and procedures, and these mechanisms operate effectively, it would mean that the conflict can be resolved and the relationship can continue.

Both the disciplinary hearing and the grievance enquiry have certain prerequisites in terms of procedures to be followed, as spelled out in Schedule 8 of the LRA. It involves a lot of paper work with regard to notices that must be sent out timeously, minutes that must be typed and records that must be kept (Nel 1997:212-237).

If the conflict cannot be resolved through the available internal mechanisms and processes, it must be referred outside of the organisation to an institution

such as the CCMA, private dispute resolution bodies or bargaining councils, and there are a number of prerequisites that have to be met. The dispute must be formulated properly according to the LRA and referred in the manner and according to procedures stipulated in legislation.

It then becomes highly formalised in that a specific form must be used, particular information must be provided, certain time limits must be followed, etc. The process of dispute resolution then also becomes costly, since offering to pay compensation at the conciliation phase might be the only way of preventing the dispute from going to arbitration. The impression is then that the employer is being punished (Israelstam 2002:6).

These procedures usually also take time, and Mischke (1997a:13) has made it clear that the process becomes more formalised as time goes by and as conflict is left unresolved. By the time the conflict becomes a dispute, it has been intensified by aggravating factors (Mischke 1997a:13). Aggravating factors, according to Anstey (1991:43) are various intervening variables, which serve to aggravate (or moderate) the actions of the parties involved. In the absence of proper conflict regulation mechanisms, or if these mechanisms are insufficient to countervail the influence of aggravators, conflict can be expected to grow in intensity and size (Anstey 1991:51).

The way in which a grievance is dealt with internally will have an impact on the way in which a dispute is formulated and referred.

7.2 The views of commissioners regarding the ability of parties to deal with conflict

The perceptions of the CCMA commissioners were obtained regarding the relationship between the internal management of conflict and the referring of disputes to the CCMA.

There was an overwhelming agreement that most small employers do not follow internal procedures before dismissing a worker, often because they do not have these procedures in place. There was also agreement that mechanisms (disciplinary and grievance procedures) might not be used properly because of *negative perceptions* that both the employer and employee have about conflict. This could be a contributing factor to the high rate of referrals to the CCMA.

The commissioners' perception was that there is still a *flagrant disregard*

for the law amongst some employers. Many employers remain ignorant of their responsibilities towards employees and in most of the individual unfair dismissal cases there are procedural unfairness on the side of the employers. Disciplining an employee is usually an unpleasant task and employers are reluctant to follow proper disciplinary procedures, with the result that more disputes land up at the CCMA. These responses support the fact that there are problems with the internal procedures in companies.

The ignorance of employers can be attributed to the fact that laws in the past have been written in a very *legalistic manner*. 'The LRA is also deceptive as it seems quite straightforward with simple language on the surface, but we know that it has all kinds of twists. People don't read it because they assume it is going to be difficult....'

However, several commissioners said that not only the employers are to blame. Employees of small employers are often not aware of the proper internal procedures to be followed and most trade union representatives are ill-prepared to represent their members in disciplinary and grievance procedures. There is a perception that there are problems with regard to the ability of individual employees and their trade union representatives to properly deal with internal conflict. Conflict is being viewed as destructive and employees fear being victimised if these procedures are being used, because they will be regarded as 'trouble makers'.

It was mentioned that the relationship between the use of internal mechanisms and the referral of a dispute to the CCMA is only *theoretical* since there is nothing preventing an employee from taking the case to the CCMA irrespective of how effective the conflict was handled in the organisation. Although employers should do much more to attempt to follow fair internal procedures, it will not deter employees from referring a dispute to the CCMA if they do not perceive the internal procedures as credible and have not bought into them. The most important prerequisite for successful handling of conflict is, therefore, *credibility* of the procedures.

It was pointed out that the disciplinary procedures in companies are usually well developed whereas the grievance procedures are not. This gives an indication of the paternalistic approach to the labour relationship that still exists in the workplace and highlights a specific problem regarding the use of

power. Small and medium sized employers perceive the grievance proceedings as a challenge to their power and in both the grievance and disciplinary hearings the employer tries to reaffirm his/her power. This allows conflict to escalate and makes the resolution of the dispute in conciliation very difficult.

To summarise, the commissioners were of the view that especially the *small employers* do not know the law and do not apply fair procedures in the workplace as these procedures are *complex*. Employers do not read the Act because they perceive it as being written in a *legalistic* manner. Both employers and employees perceive *conflict as negative* and think that the internal mechanisms should be avoided where possible. *Employees* do not have sufficient knowledge of the law, are not aware of their rights and are badly advised by their trade union representatives regarding how to deal with conflict.

8. Appropriateness of the Dispute Resolution System for Small to Medium-sized Employers

The findings on this aspect of the study were contradictory. On the one hand, the commissioners perceived the system as simple and straight-forward and therefore appropriate for small to medium-sized employers, but on the other hand they agreed that these employers need the assistance of labour consultants. ‘The small to medium sized employers do not have the ability to properly deal with conflict internally and they have specific need for assistance which they obtain from labour consultants and employer organisations...’

The overall impression was that the system was designed for big employers, and provided little flexibility for the small to medium-sized employers. ‘It has high competence requirements and a highly knowledgeable person is required to work through the minefield of the LRA...’ It was pointed out that the way in which the small employers deal with the difficulties they experience with the technical nature of the dispute resolution system is detrimental to the relationship between the employer and the employees. The small employers involve employer organisations and labour consultants to assist them with conflict, thereby creating a distance between themselves and their employees. ‘Small employers are so scared of these procedures and the CCMA that they

take out insurance policies against CCMA awards allowing them to hire and fire at will...?’

Although the system has been designed for large employers and does not allow enough flexibility for small employers, one cannot change the system for small employers without losing its integrity. ‘Employers will have to change their organisational culture and management style and start to treat their employees like they would their diesel engine, by reading the manual and following the appropriate procedures.’

Some participants felt that the system has high competence requirements for a fair dismissal and that highly competent people should become involved in the conflict at the earliest stage possible. It was suggested by a number of commissioners that labour lawyers and consultants should be allowed to represent individuals in internal grievance and disciplinary hearings.

9. Appropriateness of the System for Individual Employees

Most of the disputes at the CCMA are individual unfair dismissal cases and the question arises whether the system was designed to deal with such a high caseload of individual dismissals. The question is whether there is an alternative method to deal with individual dismissal disputes without prejudicing employees.

Most of the respondents agreed that the system is appropriate for individual employees for reasons pertaining firstly to the fact that it is easily accessible, low-cost and user-friendly, and that employees know about the CCMA and are aware of their rights. Commissioners are trained and skilled to assist individual employees, inform them of their rights and guide the parties through the process.

The idea that it does not cost an employee anything to pursue a case was, however, criticised: ‘Cases can get very technical and most white-collar workers usually approach labour consultants or labour lawyers to assist them when there was a dismissal’. There are also costs involved for the domestic worker who has to travel to Johannesburg more than once: to refer the dispute, then for the conciliation, and then for arbitration.

The problem of the un-represented individual in a disciplinary hearing was highlighted. There is usually a legally trained industrial relations practitioner or labour consultant representing the employer, whereas the employee is only allowed assistance by a co-worker or a shop steward. It was argued that individual employees should have the right to be represented by lawyers or consultants even if they are union members since ‘... trade union representatives are ill-prepared to represent their members during grievance and disciplinary hearings’.

It was argued that the accessibility is one of the reasons why the CCMA is so overburdened with individual unfair dismissal cases and it was suggested that ‘...the CCMA should look at ways to get rid of these individual unfair dismissal cases’. This implies alternative methods and institutions to deal with most individual unfair dismissal cases.

The benefits of the pre-dismissal arbitration (that is when a CCMA commissioner chairs the internal hearings) were emphasised but it was reiterated that many employers would not be able to afford the R3 000.00 per day to get the CCMA commissioners involved. It was suggested that a presiding officer from any recognised panel should be accredited to do the pre-dismissal arbitration, thereby bringing justice to the employee in the workplace and alleviating the pressure on the CCMA.

10. Reasons for the Low Settlement Rate in Gauteng and Possible Solutions to the Problem

Commissioners said that the dispute resolution system in Gauteng is under strain due to the high referral rate, the high case load and the lack of time for proper conciliation. However, they also felt that the most important reason for the low settlement rate is *non-attendance*, either because the employer specifically wants to get to *arbitration* or because the parties have not been properly and timeously notified as a result of *poor case management* and administration.

The preference for *arbitration* could be an indication of a gradual move back to a quasi-judicial system due to the problems experienced with CCMA

processes. Bigger employers use industrial relations specialists and labour lawyers to ensure complete fairness in their internal processes. They have a policy of not settling in conciliation due to the effort and costs involved in getting the internal procedures right.

Some trade union and employer organisation representatives refuse to settle and turn the conciliation into *power play* and posturing to impress their members/clients. This could be ascribed to a lack of training in conciliation and negotiation skills of the parties. Such attitudes make settlement of the dispute a very difficult task for commissioners.

Applicants have *high expectations* partly because of a lack of knowledge or because they have been wrongly advised by unions and consultants to believe that they are entitled to huge amounts of money. Even if the offer made by the respondent is reasonable, they think they will do better at arbitration. One respondent offered the following suggestion to entice parties to settle in conciliation: 'If an offer was made to the employee at conciliation and it is not accepted, the employee must pay the cost of the arbitration if he or she does not get more at arbitration. The offer must be taken into account when compensation is decided on.'

It was also suggested in similar fashion that the offer that was made by the respondent in conciliation, should be taken into account in the arbitration award. If it is found that the offer was reasonable and that the applicant unnecessarily prolonged a dispute that could have been settled at conciliation, it should be taken into account in the awarding of costs against the applicant. Such a system would force applicants to consider the merits of their cases more seriously, to be more realistic about their claims and to take conciliation seriously. It could also create an incentive for employers to attempt to settle instead of 'fighting it out in arbitration or Labour Court' if they know there is a chance that a reasonable offer at conciliation will be accepted.

There is a further perception that there are *no costs* involved to refer a dispute to arbitration. Applicants are under the impression that they have nothing to lose, as they are not aware of the possibility of a cost order for frivolous and vexatious referrals. Although theoretically possible, such cost orders are uncommon and difficult to execute in practice.

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Special skills are required to become a good conciliator, and commissioners are not properly trained to do successful conciliations. Even if you have very sophisticated parties who come to the conciliation with no intention to settle, a skilled commissioner would have a better chance to resolve such a dispute. It was suggested that non-legally trained commissioners should be used for conciliations and not for arbitrations since they are sometimes more successful in conciliations. A further point was made that ‘...the good conciliators do not work for R1 500.00 per day and have therefore left the CCMA’.

It was suggested that the conciliation-arbitration (con-arb) process should be made compulsory for all misconduct cases because ‘...if parties know the arbitration is in the next hour and not 6 months down the line, the chances are that the settlement rate will increase’. It was also suggested that the parties should be phoned a day or two before the hearing to find out if they are going to attend or not in an attempt to curb the problem of non-appearance. The possibility of some sort of penalty such as a fine for non-appearance at conciliation should be considered and this amount could be made part of the arbitration award. The attitude of many employers is, ‘Why should I pay now if I can do so 5 to 6 months down the line at arbitration?’ The future of the conciliation process is questioned as it has become obsolete and superfluous.

An unintended consequence of the system is that the issuing of the certificate, indicating that the dispute remains unresolved, is built into the negotiation process. In the past, the *certificate* was the last requirement before going on strike or referring the dispute to arbitration or Labour Court. Today the parties know that they will negotiate further once they have a certificate, or there would be another chance of settling the dispute just before arbitration. However, on the CCMA statistics, it reflects as a low settlement rate.

Other important reasons for the low settlement rate have to do with low levels of motivation of commissioners due to the high caseload, little support from management, bad administration and no incentive to get settlement. It should be kept in mind that the Gauteng office of the CCMA is a huge operation with all the characteristics of a bureaucracy and the associated problems.

11. The Role of Labour Lawyers and Consultants

The views of commissioners were obtained regarding the perceived role and function of labour lawyers and consultants. Should the system change to accommodate and legitimise them or will there be efforts to further eliminate them from processes?

The negative perceptions of *lawyers* in *conciliation* centred around the fact that they tend to be very legalistic, raise unnecessary points *in limine*, have a limited role to play in conciliation and can even be obtrusive since it is often not in their best interest to settle in conciliation. If the case remains unresolved there is the prospect of an arbitration, involving preparation of the case and representation, which means more money. The role of *lawyers* in the *arbitration* process on the other hand was perceived as very positive because they assist in defining the dispute, streamlining proceedings, and focusing on important issues, and because they have experience in litigation, do research and prepare for cases. They generally make the arbitrator's job easier. This is in line with Healy's argument that poor presentation of a case at the CCMA is often a reason for delay and frustration for all the parties involved (Healy 2001:3). It was mentioned, however, that they sometimes attempt to 'score points' by being very technical and arguing irrelevant issues.

The respondents did not indicate specific negative perceptions with regard to the *fees* charged by *lawyers* because they assumed that these are market-related and regulated by the Law Society. There was a concern that *consultants* are driven by money, that there is no regulation of their fees and that '...they work with clients' money without having a trust account to manage such funds...?'

In terms of their future role, the respondents perceive one of the roles of consultants in the labour relations system as one of chairing *internal hearings*, advising the employer on what constitutes fair labour practices in the workplace and ensuring that the employer's 'house is in order'. Although the employer pays the consultant, he or she can act as a mediator between the employer and the employee, provided that he or she is seen as being objective and unbiased.

The prerequisite for the effective incorporation of consultants into the dispute resolution system is, however, that there should be a professional, regulatory body to oversee the conduct of consultants and to which they are

liable. Their role in future might *increase* because there are still many small and medium-sized employers who think that labour legislation is too complex. The fees of consultants are also lower than those of lawyers. Consultants will in any event attempt to gain access to the processes more and more, among others through the establishment of employer organisations for their clients.

The respondents in this study were predominantly *supporting the presence* of lawyers and consultants in processes and stated that ‘...the CCMA is absolutely paranoid about labour lawyers and consultants as they both have a very specific role to play’. The consultants have a preparatory role and the labour lawyers assist in arbitration. The fact that the LRA does not allow them in certain processes is problematic because ‘...there already exists a relationship of trust between them and their clients and they are usually more clued up than their clients.’ *Commissioners* should be able to deal with those ‘bad’ consultants and lawyers, ‘... but you cannot ban them from the system if there is such a huge need for their services among employers and employees’. It also *expedites* the hearing if they are inside the meeting rather than sitting outside, when the parties frequently request caucuses to consult. ‘I’d rather have the terrors inside than outside. If they are going to sabotage me, I want to see it and want to be able to stop it. I’d rather have them on board because in the room I find them quite helpful.’ In many instances the lawyers and consultants hear the other side’s story for the first time at conciliation and are only then able to consider the merits of the case and advise their clients accordingly.

Although it was pointed out that the assistance of lawyers and consultants is unnecessary in 70% of the individual dismissal cases, the perceptions were that both parties have a specific role to play in the dispute resolution system and will continue to play an important role. Consultants will be focusing more on the internal processes and preparation of the cases, and the labour lawyers focusing more on the legal technicalities in arbitration and Labour Court. The lawyers will focus on the hard issues (what you can and cannot do in terms of law) and the consultants will focus on the soft issues (what you may or may not do). There is a need for the services of both these parties in the dispute resolution system since most of the employers and employees do not have the capacity to deal with conflict and disputes in terms of the system as provided by the LRA.

It was interesting to find most of the participants admitting that they allow representation by lawyers and consultants with the consent of both parties and a firm warning that they will be sent out if they disrupt the process.

There is significant support for changes to the system to allow representation by these parties, provided that the commissioner retains the discretion. It will be interesting to see if these views will be reflected in future changes to the LRA and CCMA Rules.

12. Future of the CCMA and Possible Changes to the Current Dispute Resolution System

The respondents recognised the fact that the system is experiencing strain and they foresaw that the system will have to change. Various possible solutions for the current problems were mentioned and suggestions were made for changes to the system.

Optimism regarding the future role of the CCMA

The CCMA will still play an important role in dispute resolution in the future. The most important reason for the optimism was that it is a cheap and efficient way to access justice, while the alternatives are costly and only open for bigger employers and bigger cases, and it is seen as one of the best systems currently available.

Marginal impact of private dispute resolution bodies on the work of the CCMA

The predominant perception confirmed the views of Brand (2001:7) that the impact of private dispute resolution bodies on the CCMA will be marginal: ‘...it remains and will probably remain for long an elite phenomenon for a minority...’ because most employees and small employers cannot afford to pay the costs involved in private dispute resolution. One respondent indicated that private dispute resolution would play a minimal role as some unions have indicated that they prefer the CCMA route.

Alleviating the strain on the system caused by high referral rates of individual unfair dismissal cases

Most of the suggestions focused on the problem that there are no costs involved to refer a case to the CCMA and proposed that some sort of referral fee should be introduced for individual unfair dismissal cases. Other suggestions were: more bargaining councils should be accredited, incentives should be given by government to employers not falling in the high referrals sectors, a special telephone conciliation system should be provided, as well as better allocation and management of resources and arbitration awards – ‘...indicating that the CCMA is not a one-arm bandit that produces money when the claim form is entertained’.

Consistent application of the law with regard to individual unfair dismissal cases

The predominant response to this question was that the legislation pertaining to individual unfair dismissal cases should not be relaxed because there has to be a consistent application of the law and employees need protection against arbitrary unfair treatment. The pre-dismissal arbitration and the con-arb processes that were introduced by the 2002 changes to the LRA are perceived in a positive light. There is, however, a call for less regulation in terms of internal processes in the organisation and another suggestion was that ‘Domestic worker cases should be handled by a special tribunal, appointed by the Department of Labour’.

Too much emphasis placed on procedural fairness

The processes are becoming more and more adversarial and technical and more and more points *in limine* are being taken. The current system of dispute resolution that places so much emphasis on procedural fairness in the internal processes has created a generation of employers, consultants, labour lawyers and trade union representatives that turn internal processes into opportunities to show off their power or to score technical points. If the employee then takes the employer to the CCMA, the employer has to do everything possible to restore his or her power. ‘Things have become totally rights orientated and parties are focussing on their rights rather than looking for solutions.’

Increasing role of consultants and lawyers

As stated in the previous section, it was mentioned that the role of consultants and lawyers would definitely increase, with the consultants more involved in the internal processes and the lawyers more involved in arbitration. The following interesting suggestion was made:

‘The labour consultants should be brought on board. Give them credibility and legitimacy in the eyes of the employers and employees and let them take care of the disciplinary and grievance hearings. There is a definite problem with internal procedures – so use them. Maybe a panel of consultants should be established that works with the CCMA or a panel accredited by the CCMA...’

Ensuring awareness of importance of proper internal mechanisms

One commissioner suggested that the system should change to require employers to register as employers at the Department of Labour. This registration should set in motion a process to ensure that they are aware of their obligations and have proper internal mechanisms to deal with conflict such as disciplinary procedures.

Promoting the use of private dispute resolution

The bigger parties – employers and trade unions – should be encouraged to make more use of private dispute resolution. This confirms Deale’s view that private dispute resolution will become increasingly attractive as the benefits of cost savings and preservation of workplace relationships become more apparent (Deale 2001:35). They should include provisions for private dispute resolution in contracts of employment for more senior employees such as those in management and professionals. ‘[T]he CCMA must get its act together and accredit more outside private dispute resolution bodies.’

Better utilisation of the con-arb process and case rolls

Better use should be made of the con-arb process. There should be more conciliation and arbitration rolls to deal more effectively with the case load and make more efficient use of part-time commissioners. This means that cases are only set down for a certain date, and commissioners simply take the next case on the roll.

Allowing employers to dismiss at will, but at a price

The test for a system dealing with such a high incidence of unfair dismissal cases is to see how many employees are reinstated and how many remain in their jobs. The CCMA currently does not achieve this.

An alternative system was proposed, namely that firstly, senior managers and high level employees should be excluded (as they would be able to look after themselves), and secondly, that employers should be allowed to dismiss at will provided they pay compensation to the employee. If the employer chooses not to compensate the employee, then the employee can challenge the dismissal. The current system does in any event not protect the employee and does not provide for lasting reinstatement, so the interests of the individual employee would be better served by such a change.

Re-designing the system

Some commissioners were of the opinion that the system should change, by undertaking ‘...a full-scale Wiehahn commission style change going back to the drawing board...’

Moving back to a judicial system

One of the reasons for the low settlement rate was that the parties specifically want to get to *arbitration*. This could be an indication that there is a need for a shift in the aims and function of the dispute resolution system. Where the intention before was to have a less legalistic, simple and expeditious system with emphasis on conciliation, there is, according to one commissioner, now such a need for legal certainty that there is a gradual move back to a judicial system due to the problems experienced with the alternatives offered by the CCMA.

Serious consideration of reasonable offer of compensation in conciliation

As mentioned earlier, the offer that was made by the respondent in conciliation should be taken into account in the arbitration award. If it is found that the offer was reasonable and that the applicant unnecessarily prolonged a dispute that could have been settled at conciliation, it should be taken into account in the awarding of costs against the applicant. Such a system would force applicants to consider the merits of their cases more seriously, to be more

realistic about their claims and to take conciliation seriously. It could also create an incentive for employers to attempt to settle instead of 'fighting it out in arbitration or Labour Court' if they know there is a chance that a reasonable offer at conciliation will be accepted.

Making the con-arb process compulsory and limiting non-appearance at conciliations

The commissioners questioned the future of the conciliation process as it is seen to have become obsolete and superfluous. Therefore, it was suggested that the con-arb process should be made compulsory for all misconduct cases. In an attempt to curb the problem of non-appearance, it was suggested that the parties should be phoned a day or two before the hearing to find out if they are going to attend or not. The possibility of some sort of penalty such as a fine for non-appearance at conciliation should be considered and this amount could be made part of the arbitration award.

Motivating CCMA commissioners to settle disputes and provide good awards

It was mentioned by commissioners that the calibre of commissioners doing private dispute resolution is better than that of the CCMA commissioners. 'Competent conciliators and arbitrators do not work for R1 500.00 per day....' CCMA commissioners must provide an excellent service for the majority of individuals who cannot afford private processes. The private commissioners are doing dispute resolution for their own benefit and reputation and are therefore motivated to settle disputes and provide good awards. The problem is therefore, how to keep CCMA commissioners motivated and instil in them a passion for their work if they work under strenuous circumstances.

13. Exploring Alternative Dispute Resolution Processes

Making use of Alternative Dispute Resolution (ADR)

The definition of ADR has not changed and it is in essence any conciliatory process outside of the judicial system. ADR is also more than conciliation,

mediation and arbitration. It includes processes such as facilitation and third party intervention in problem solving. The prerequisites are that it should be voluntary and the third party must be seen as impartial and credible.

CCMA arbitration is a misnomer for state adjudication without a right to appeal. Arbitration is in essence a voluntary process, ‘...but at the CCMA the employers are forced into arbitration and they will do anything in their power to get out of it. The incidence of review for private arbitration is less than 1% but for CCMA arbitrations it is more than 30%’. The term ‘alternative’ is viewed as misleading and there should rather be a focus on ‘appropriate’ dispute resolution. There is an uncertainty amongst unions and bigger employers as to what ADR is and if it will be recognised by the courts.

Exploring more alternatives just before dismissal

It seems as if certain bigger employers have devised their own internal systems of pre-dismissal alternatives such as *review committees* or *review panels* in the organisation, consisting of management and trade union representatives. This committee evaluates a case, even after appeal, and the dismissal would only be effected if the committee agrees. If the credibility of this committee is acknowledged by the workers and the union informs the employee that they will not represent him or her at the CCMA – because they are satisfied that justice had been done – then the chances of this employee referring the case to the CCMA are less. ‘Such a committee can actually bring management and the union closer together.’ This alternative applies mostly to bigger organisations where there is an established relationship between the employers and the union.

Such a system could, however, be criticised as attempts by employers to ensure that they have crossed the t’s and dotted the i’s to strengthen their case at arbitration.

Assistance with the technicalities of the internal procedures

The pre-dismissal arbitration process has become available with the recent changes to the LRA and entails that a CCMA commissioner does the arbitration as part of the internal processes of the organisation. This, however, has not taken off so far because ‘...big companies invest a lot of money in training and

developing their personnel to do the internal processes 100% correctly and are not prepared to spend an additional R3 000.00 per day on a CCMA arbitrator to come and do something that they can do themselves’.

Replacing the grievance and disciplinary procedures

More attention should be given to a process called ‘conflict resolution facilitation’: ‘People are scared to deal with conflict and need a facilitator to assist them’. This process requires management to arrange a meeting between the parties, on neutral ground, with a ‘conflict resolution facilitator’, who should be a highly skilled person, to assist parties to work through the issues and emotions underlying the conflict. ‘At the CCMA there is no time to deal with emotions and if this could be handled internally the chances are firstly that conflict will not escalate to become disputes, and if it does, there will be a better chance of settling in conciliation. If not, the issues will be much clearer at arbitration making the commissioner’s work much easier.’

An interesting suggestion was that the professional boards for psychologists and social workers should be approached to train their students in the field of workplace conflict facilitation and to allow them to do their practical courses at the CCMA or in companies.

Making more use of private dispute resolution

The only true ADR is found in private dispute resolution. ‘Employers think it is too expensive but after four or five appearances at the CCMA they begin to think differently.’ If the parties are sophisticated enough, as in the case of professional and high level workers as well as unionised sectors of the economy, they should use private dispute resolution. The CCMA should thus be reserved for parties that are unsophisticated and highly adversarial, as in the majority of individual unfair dismissal cases involving small to medium-sized employers.

Retaining and emphasising the importance of the conciliation phase

Most of the participants in this study have been very positive about the con-arb process as a cure for non-attendance, low settlement rate and tedious time delays. However, the con-arb process is not very popular in private dispute resolution because the process of conciliation only comes to fruition in a

voluntary system. A compulsory system eventually forces out the conciliation phase as a means of resolving disputes.

14. Conclusion

In the past, the labour relationship was in essence a human relationship. Even though many employers did not have a good (human) relationship with their employees, many others did. The labour relationship has now become a legal arrangement with many legalistic prerequisites, and the main focus of human resources departments is on being procedurally correct. The human resources departments of big companies consist of industrial relations specialists, appointed specifically to deal with CCMA cases. They know the system and make sure that cases are being dealt with 100% correctly.

Dealing with grievances and disputes has become a rights-based process where the parties prefer to focus on their differences and not on what they have in common. Employers use their power by having labour relations specialists or labour lawyers and consultants involved in the processes, whereas the employee is usually limited to representation by a union or a co-worker.

It can be concluded that the perceptions of the CCMA commissioners who have been involved in this study supported the assertions on which this study was based.

It was found that the dispute resolution system is not bringing the parties to the labour relationship closer together. People are much more aware of their rights and none of the respondents supported the possibility that the employment relationship is becoming less adversarial. The high referral rate is seen as an indication of 'pathology of conflict' in the labour relationship.

The reason for the adversarial nature of the labour relationship in the past was that collective issues such as exploitation of the masses, low wages, inequality and discrimination were based on race in the workplace. It seems as if the adversarial nature of the labour relationship has now moved away from these collective issues to individual issues such as discipline and unfair dismissals. It is not the 20% interest disputes putting the system of dispute resolution under strain, but rather the 80% individual unfair dismissal cases.

The findings certainly gave no indication of a growing emphasis on a more people-centred and healthy work environment. The recent changes to the LRA regarding the provision of the pre-dismissal arbitration process and the con-arb process could be seen as treating only the symptoms and not the causes of workplace conflict and an unhealthy dispute resolution system.

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Book Reviews

Invisible Stakeholders: Children and war in Africa

McIntyre, Angela (ed.) 2005.

Pretoria: Institute for Security Studies. 136 pp.

Reviewed by Annie Derges
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When you hear the words ‘child soldier’, do you conjure up (as I admit to having done) the image of the child-abductee holding an AK-47 and dressed in cast-off scraps of uniform? Or the tramp of small feet of the children of Northern Uganda, portrayed in a recent documentary film, who make their way each night from the villages to the safety of towns? Or, as you approach a road junction in your car, in almost any city of Africa, and that child approaches, hand outstretched, do you think: if war broke out, that child would be better off as a soldier...

What is the truth that must lie between the perceptions of children in war as either helpless victims or the vanguards of African liberation struggles? *Invisible Stakeholders* tries to get to the truth beyond the received perceptions of children in war. Angela McIntyre was motivated, as she says, to compile this book out of concern with what, in international circles, was passing for the ‘voices of children’, or more precisely, with their disembodiment. Horror stories of rape, abduction and systematic violence from the mouths of children did serve the purpose of mobilising and galvanising sentiment against the use of children as soldiers. But, delivered by child-victims, far from home, to groups

of policy-makers and activists, they become irrational appeals, stripped of their political meaning, and ultimately alienating an important issue from broader discussions of human security. The child-as-victim approach omits fundamental truths about children's involvement in war: that child recruitment is not solely the responsibility of the Sankohs, the Konys and Taylors; that African states are failing to guarantee the rights of their children and youth; that poor governance and policies which do not answer to the majority – children and youth in this case – contribute to conflict.

Angela McIntyre makes an important demographic point: that the majority of Africa's population, unlike the so-called ageing 'developed' world, are children and young people. And young people do have agency. The ways in which bad policies impact on children are not even fully understood. Little effort is made to monitor the impact of political decisions on young people after laws are passed, conventions are signed and policies implemented.

How, then, to move beyond the stereotype? Avenues for political expression for children are virtually non-existent, since they are considered to be physically weak and mentally immature, until, as Afua Twum-Danso says in his discussion of the various Conventions on children's rights, they reach the 'magic' age of eighteen, when overnight they turn into mature responsible adults, and go to vote in elections. What of those children whose parents have died, or are sick with AIDS? Those child-headed households one hears so much, and knows so little about?

The first chapter does well in giving examples of the many ways in which African youth have found agency and political expression, from Sudan, to Ethiopia, Zanzibar and the better-known Soweto schools uprising in South Africa. Yet, for example, South African children and youth have not been involved in the politics of peace-time. Afua Twum-Danso makes the point that as long as weak political and economic structures exist and the continent remains dominated by young people, they will continue to become involved in conflicts. Thus, their large numbers and their estrangement from the formal social and political order will continue to be explosive combinations in times of political instability. It follows, as he says, that instead of advocating for the end of child soldiers, it would be more worthwhile to spend our energies addressing the structural conditions that make it easy to militarise Africa's children and youth.

Chapters two to six present case studies of children's involvement in conflict in different countries across the continent. In her chapter on Mozambique, Ana Leao notes that childhood means different things in different countries and cultures, and the concept of childhood in Africa differs widely from that of the 'developed' world. As one who lived in Mozambique during the days of the socialist revolution, I can confirm Ana Leao's assertion that young people in Mozambique were pleased to be involved in the process of social change. As one young Mozambican put it, 'I am proud of being youth because I know what I want.'

In Angola, the findings of Imogen Parsons were similar. The United Nations International Children's Emergency Fund (UNICEF) in 1999 stated that 'Angola is the worst place in the world to be a child'. Yet Imogen Parsons found that their involvement in the war had the effect of re-creating Angolan youth as political subjects in their own right, often with strong and coherent views.

In Sierra Leone, the young people recruited into the Revolutionary United Front (RUF) and other factions have been described as 'lumpen' and 'subaltern,' a factor that contributed to the violent trajectories of that war. Kwesi Aning and Angela McIntyre show how the youth involved in the Sierra Leone conflict were stigmatised, regarded as barbarians, by the elite. Yet for the most part, the children who fought were not abductees, but volunteers, and the study revealed that children often changed factions or fought for several factions. There is a notion, which the image of Sierra Leone conjures up, of innate African brutality; the idea that youth are somehow predisposed towards violence. The authors ask: 'Constructions of children and youth have served policy agendas, but have they served young people themselves?'

The chapter on Uganda unfortunately focuses on Kampala and Entebbe, rather than the area in the north of the country where the conflict is actually taking place. This does nothing to address the perceptions of children in Uganda as child abductees (those small feet tramping every night to safety in the towns).

Like an afterthought, the chapter on women always comes at the end of every book. ('Better put in a chapter on gender...'). The issue of girls and women in war, and the dual roles they assume, deserves a book to itself. Women recruited into war, and their subsequent identity crisis when the war is over, is

Annie Derges

a universal problem. 'Rosie the Riveter' is a worldwide phenomenon, but in the case of the women who participated in the Ethiopian Tigray People's Liberation Front (ETPLF), it was aggravated by the fact that they had been recruited as children. A child recruited at twelve years of age will know nothing of how to manage a household.



Seeking Mandela: Peacemaking between Israelis and Palestinians

Adam, Heribert & Moodley, Kogila 2006.

Johannesburg: Wits University Press. 224 pp.

Reviewed by Senzwesihle T. Ngubane

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The publication of this book could have not been timelier given the political evolution in the Israel and Palestine politics as well as the changing world order in which the conflict finds itself. The political evolution has to do, among other things, with the coming into power of Hamas, while at the same time there is a shifting political landscape in Israel with the formation of the Kadima Party. However, closer to home and directly related to the title of the book, *Seeking Mandela*, the publication of this book could have not been timelier. It comes at a time when the South African leadership and government are expected to contribute towards finding a solution to the conflict in Israel and Palestine.

The book is as much about the conflict in Israel-Palestine as it is about issues of leadership among other things. This is reflected in the first few pages of the book where the authors state that ‘... a social movement’s policy is inevitably influenced by the moral clarity of leaders who are admired because of their principled guidance’. The book is as much about the conflict in Israel-Palestine

as it is about the extent to which similar cases, such as South Africa, could be employed to seek solutions to the Israel-Palestine conflict.

Thus, in this way, the authors set out to first trace the evolution of the ideologies that informed the making of the former Apartheid State and to juxtapose this with the evolution of Zionism as an ideology on which the founding of the State of Israel was based. This examination of the history of these two situations is documented in chapters two and three of the book. In this sense, the book then sets out to discern some of what it calls myths of false analogies between the evolution of the politics in South Africa and in Israel. However, in exposing what the authors refer to as 'false analogies', the book delves into six core areas, namely, *economic interdependence, religion, third-party intervention, leadership, political culture and violence*. These six areas are explored within the context of evaluating their contribution to either progress or regress in finding a solution to the conflicts in South Africa on the one hand and Israel and Palestine on the other. In exploring these areas, the broad conclusion reached by the authors is that, while such conditions could have served as the motivating force for change and the eventual end of the conflict in South Africa, by and large, they have served as impediments in the case of Israel-Palestine.

The comparative review of these cases is explored in chapter four of the book, which begins with the examination of the economic interdependence argument. An illuminating section of this chapter is the one titled *Unifying versus divisive religion*, which points out how religious leaders from across the colour-line (the Anglican Archbishop Desmond Tutu, the late Catholic Archbishop Dennis Hurley and the Dutch-Reformed Minister Beyers Naudé) used the pulpit to oppose a system of injustice. The authors argue that in the case of the Israel-Palestine conflict, religion was increasingly placed at the centre of the conflict, and as such, has served as a dividing force between the parties. For instance, 'Orthodox Jews have succeeded in imposing religious prescriptions on a multi-religious state that defines itself officially as Jewish' (p. 64). In this same section, the authors reflect on the support, particularly in the West, that the Zionist movement has been able to amass for the cause of Israel, which is something that the Afrikaner Calvinism could not quite accomplish. However, there seems to be no clear critical analysis or explanation of how such international support was accumulated.

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Other illuminating sections of chapter four are about ‘third party interventions and embattled leadership in controversial compromises’ (p. 71 and p. 77). With regard to the issue of third party intervention, the authors bring a telling difference in the two cases. On the one hand, in the case of South Africa, the international isolation of the apartheid state as a pariah enhanced the conviction of victory from the internal forces that were opposed to it. On the other hand, in the case of Palestine, the ultimate end of the conflict has remained uncertain. The section on leadership and compromises compares and exposes the challenges that leadership face. For example, issues of legitimacy impact on the quality and impacts of compromises made. Again, in this section, the challenges faced by the African National Congress (ANC) and the Palestinian Liberation Organisation (PLO), such as managing differences between a movement in exile and an internal movement, are discussed.

Having explored these areas and having highlighted the differences between the two cases, the authors note that, while there are indeed differences, it would be unjustified to conclude that the Middle East cannot learn lessons from the South African Negotiation process (p. 33).

Thus, the last two chapters of the book, ‘*After the violence*’ and ‘*Conclusions*’, among other things, draw lessons that can be learned from the South African process. The chapter on *After the Violence* is forward- looking in that it explores options that could be available for dealing with the past or what could be a people’s collective memory of that past.

An issue that the book does not further explore is the one of *collective responsibility* (p. xi). The authors argue that there exists collective responsibility when crimes are committed in the name of your nation or when you have unwittingly benefited from your group’s action. A further exploration of this concept would have helped the reader to understand if collective responsibility should translate into collective punishment. Nevertheless, the book is a very informative comparison of two case studies and the conflict processes involved. It will offer interesting insights to any conflict practitioner about the difficulties found in trying to manage a process towards peace as well as about the challenge placed on the leadership with regard to making the right choices and decisions.